

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

	Chapter 11
LEHMAN BROTHERS	Case No. 08-13555(JMP)
HOLDINGS, INC., et al.,	(Jointly Administered)

Debtors.

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VIDEOTAPED DEPOSITION
OF
MICHAEL A. FAZIO
New York, New York
Friday, February 12, 2010

Reported by:
ANNETTE ARLEQUIN, CCR, RPR
JOB NO. 27497

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February 12, 2010
9:31 a.m.

Videotaped deposition of MICHAEL A. FAZIO, held at the law offices of Boies, Schiller & Flexner, LLP, 575 Lexington Avenue, 7th Floor, New York, New York, before Annette Arlequin, a Certified Court Reporter, a Registered Professional Reporter and Notary Public of the State of New York.

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ALSO PRESENT:

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IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

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1 M. Fazio
2 THE VIDEOGRAPHER: This is the start
3 of tape labeled No. 1 of the videotaped
4 deposition of Michael Fazio in the matter
5 In Re Lehman.
6 This deposition is being held at 575
7 Lexington Avenue, New York, New York on
8 February 12th, 2010 at approximately 9:31
9 a.m.
10 My name is Carlos Lopez from TSG
11 Reporting, Inc. and I am the legal video
12 specialist.
13 The court reporter is Annette
14 Arlequin in association with TSG Reporting.
15 Will counsel please introduce
16 yourselves for the record.
17 MR. STERN: Sure.
18 Jack Stern from Boies Schiller &
19 Flexner for Barclays Capital, and with me
20 today is Michelle Sekowski.
21 MS. SCHAFFER: Tracy Schaffer from
22 Jones Day representing LBHI.
23 MR. MILLS: Carl Mills from Hughes,
24 Hubbard & Reed representing James W.
25 Giddens, SIPA Trustee.

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1 M. Fazio
2 to approve the sale transaction involving
3 Barclays and Lehman?
4 A. Can you be more specific on what
5 date?
6 Q. That was a hearing on September 19th,
7 which was a Friday.
8 A. Yes, I was there.
9 Q. When you arrived at the courthouse,
10 did you have any discussions with anyone from
11 Lehman or Barclays?
12 A. Generally, no. It would have been
13 more discussions with the Houlihan people and
14 Milbank people at the time.
15 Q. Do you recall that during the course
16 of that hearing there was a recess in the
17 proceeding?
18 A. Yes.
19 Q. Did you participate in that recess?
20 MS. TAGGART: Object to form.
21 A. I don't know what you mean in terms
22 of participate.
23 Q. Let me ask you, what did you do
24 during that recess?
25 A. I was with my partner and we would,

1 M. Fazio
2 MS. TAGGART: Erica Taggart with
3 Quinn, Emanuel, Urquhart, Oliver & Hedges
4 for the Committee and also the witness, and
5 I'm here with Tyler Whitmer.
6 THE VIDEOGRAPHER: Will the court
7 reporter please swear in the witness.
8 * * *
9 MICHAEL A. FAZIO, called as a
10 witness, having been duly sworn by a
11 Notary Public, was examined and testified
12 as follows:
13 EXAMINATION BY
14 MR. STERN:
15 Q. Good morning, Mr. Fazio.
16 A. Good morning.
17 Q. What is your current position at
18 Houlihan?
19 A. I'm managing director at Houlihan &
20 Lokey.
21 Q. And was that your position in
22 September of 2008?
23 A. That was.
24 Q. In September 2008 did you attend the
25 hearing in the Lehman Brothers bankruptcy case

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1 M. Fazio
2 you know, I'd overhear some parts of
3 conversations, but I was not an active
4 participant in any of those conversations with
5 various people from the estate, Barclays or
6 whoever was participating.
7 Q. Which partner are you referring to?
8 A. It would have been the estate and
9 Barclays and -- the estate being Weil, Gotshal.
10 Q. You said you were with your partner.
11 A. That's correct.
12 Q. Who was that?
13 A. Saul Burian.
14 Q. And what do you recall was said by
15 representatives of the estate during that
16 recess?
17 A. I was not an active participant and
18 could barely overhear. There were big crowds of
19 people that were gathered around, so I was on
20 the outskirts so I don't have an active
21 recollection of exactly what was said and who
22 was saying what to whom.
23 MR. STERN: Let's mark as
24 Exhibit 618A, a one-page document.
25 (Deposition Exhibit 618A, Email dated

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<p>1 M. Fazio</p> <p>2 9/18/08 from Fazio to Geer, Bates stamped</p> <p>3 HLHZ0016316, marked for identification, as</p> <p>4 of this date.)</p> <p>5 BY MR. STERN:</p> <p>6 Q. Mr. Fazio, I've put in front of you a</p> <p>7 document that we've marked as Exhibit 618A.</p> <p>8 Can you tell me what this is?</p> <p>9 A. It's an email from myself to Brad</p> <p>10 Geer asking him to listen to the Barclays</p> <p>11 investor call or have somebody listen to the</p> <p>12 investor call.</p> <p>13 Q. And why did you write this email?</p> <p>14 A. I was -- I had understood that there</p> <p>15 was an investor call that Barclays was having</p> <p>16 and I wanted to see if we could get additional</p> <p>17 information with respect to the transaction.</p> <p>18 Q. Had you listened to that call?</p> <p>19 A. No, I have not.</p> <p>20 Q. And at the time you wrote this email,</p> <p>21 you had not listened to it.</p> <p>22 A. That's correct.</p> <p>23 Q. How did you learn of that call?</p> <p>24 A. I do not know, recall, how I learned</p> <p>25 of the call.</p>	<p>1 M. Fazio</p> <p>2 Q. Do you know if Mr. Geer did in fact</p> <p>3 listen to that call?</p> <p>4 A. I do not recall.</p> <p>5 Q. Did you ever get a report from him</p> <p>6 concerning that call?</p> <p>7 A. No.</p> <p>8 Q. Do you recall getting a report from</p> <p>9 anyone concerning the substance of that call?</p> <p>10 A. No, I do not.</p> <p>11 Q. After the September 19th hearing that</p> <p>12 we just referred to, what was your next</p> <p>13 involvement in connection with the</p> <p>14 Barclays/Lehman sale transaction?</p> <p>15 A. I attended two full days of</p> <p>16 discussion on the 20th and 21st, or yeah, that's</p> <p>17 Saturday and a Sunday, that's correct.</p> <p>18 Q. And what were your primary areas of</p> <p>19 activity over that weekend, you personally?</p> <p>20 A. To understand the transaction as best</p> <p>21 we could, to get information with respect to the</p> <p>22 transaction and the securities that were being</p> <p>23 transferred and the liabilities being assumed as</p> <p>24 part of the transaction.</p> <p>25 Q. What work did you do over that</p>
Page 12	Page 13
<p>1 M. Fazio</p> <p>2 weekend to understand the securities being</p> <p>3 transferred?</p> <p>4 MS. TAGGART: Objection. Calling for</p> <p>5 potential privilege or work product</p> <p>6 information.</p> <p>7 You can describe generally the</p> <p>8 activities, but I caution you not to go</p> <p>9 into any internal Houlihan, if there's any,</p> <p>10 projects or analysis at this time.</p> <p>11 THE WITNESS: Okay.</p> <p>12 A. Can you restate the question?</p> <p>13 MR. STERN: Do you want to reread it?</p> <p>14 (Question was read back as follows:</p> <p>15 "QUESTION: What work did you do over</p> <p>16 that weekend to understand the securities</p> <p>17 being transferred?")</p> <p>18 A. We had meetings with the debtors and</p> <p>19 we had a meeting with representatives from</p> <p>20 Barclays associated on the 20th and 21st</p> <p>21 meetings that we had to understand that.</p> <p>22 Q. Did you review any written material</p> <p>23 concerning the securities?</p> <p>24 A. I was generally involved in projects</p> <p>25 at Houlihan to understand or attempt to</p>	<p>1 M. Fazio</p> <p>2 understand the securities being transferred,</p> <p>3 yes.</p> <p>4 Q. What types of written material were</p> <p>5 you given?</p> <p>6 MS. TAGGART: Objection and could</p> <p>7 call for privileged information.</p> <p>8 I'd ask you not to reveal any, if</p> <p>9 there are any, written documents that were</p> <p>10 generated by Houlihan, but you should</p> <p>11 answer if you were given any documents by</p> <p>12 anyone such -- beyond Houlihan or your</p> <p>13 lawyers, including from Lehman or Barclays</p> <p>14 or any of their representatives.</p> <p>15 A. I was given no information from</p> <p>16 the -- from Barclays or from Lehman with respect</p> <p>17 to the transaction.</p> <p>18 Q. You were given no written information</p> <p>19 concerning the securities?</p> <p>20 A. That's correct.</p> <p>21 Q. Is it your recollection that you were</p> <p>22 not provided a spreadsheet of securities being</p> <p>23 transferred in connection with the transaction?</p> <p>24 A. Again, not from anybody, from</p> <p>25 Barclays or the estate.</p>

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<p>1 M. Fazio</p> <p>2 Q. Did you receive spreadsheets from any</p> <p>3 other source?</p> <p>4 MS. TAGGART: It's okay. You can</p> <p>5 answer.</p> <p>6 A. I would have received information</p> <p>7 from our lawyers with respect to securities</p> <p>8 which represent securities that were indicated</p> <p>9 to us being a detail of securities from earlier</p> <p>10 in the week that were thought to being</p> <p>11 transferred.</p> <p>12 Q. What did you do to analyze that</p> <p>13 information?</p> <p>14 MS. TAGGART: I'm going to object to</p> <p>15 the extent it calls for any internal</p> <p>16 Houlihan analysis.</p> <p>17 But you can describe either any</p> <p>18 general tasks that you did or any</p> <p>19 correspondence with anyone outside of</p> <p>20 Houlihan or your attorneys.</p> <p>21 A. We had correspondence with Jim Seery,</p> <p>22 with Mr. Klein, who was Barclays' investment</p> <p>23 banker, with respect to the securities being</p> <p>24 transferred on that, on the Friday. It was</p> <p>25 Saturday and Sunday.</p>	<p>1 M. Fazio</p> <p>2 Q. When you say "correspondence," do you</p> <p>3 mean face-to-face meetings?</p> <p>4 A. That's correct.</p> <p>5 Q. Aside from discussions concerning the</p> <p>6 securities, did you do any independent analysis</p> <p>7 of the composition of those securities?</p> <p>8 MS. TAGGART: I'm going to object on</p> <p>9 attorney-client and work product privilege.</p> <p>10 If you did any analysis that you</p> <p>11 shared with anyone other than Houlihan and</p> <p>12 your attorneys, you should go ahead and</p> <p>13 answer, otherwise I'd instruct you not to</p> <p>14 answer any analysis that was internal</p> <p>15 Houlihan or correspondence with your</p> <p>16 attorneys.</p> <p>17 A. I did internal analysis.</p> <p>18 Q. Did you draw any conclusions as a</p> <p>19 result of that analysis concerning the value of</p> <p>20 the securities you reviewed?</p> <p>21 MS. TAGGART: You can -- hold on.</p> <p>22 I'm going to object on</p> <p>23 attorney-client and work product privilege</p> <p>24 and instruct you not to answer.</p> <p>25 BY MR. STERN:</p>
Page 16	Page 17
<p>1 M. Fazio</p> <p>2 Q. I show you next a document that we</p> <p>3 previously marked as Exhibit 461B.</p> <p>4 Looking at Exhibit 461B, can you tell</p> <p>5 me what this is?</p> <p>6 A. It appears to be an email from Brian</p> <p>7 Kelly from Milbank to myself and Ann Makowski,</p> <p>8 which has detailed spreadsheets associated with</p> <p>9 a list of securities that were detailed and</p> <p>10 alleged to be the securities that were being</p> <p>11 transferred on the -- associated with the sale.</p> <p>12 Q. Do you know who provided this</p> <p>13 information to Mr. Kelly?</p> <p>14 A. I do not.</p> <p>15 Q. Did you review the attached</p> <p>16 spreadsheets and information on September 21,</p> <p>17 2008?</p> <p>18 A. Yes, I did.</p> <p>19 Q. What type of analysis did you do</p> <p>20 concerning the securities listed in the</p> <p>21 spreadsheet?</p> <p>22 MS. TAGGART: I'm going to object on</p> <p>23 attorney-client and work product privilege</p> <p>24 and instruct not to answer.</p> <p>25 BY MR. STERN:</p>	<p>1 M. Fazio</p> <p>2 Q. Did you do anything to determine</p> <p>3 whether there was a publicly available pricing</p> <p>4 source concerning the securities listed on the</p> <p>5 spreadsheet?</p> <p>6 MS. TAGGART: Object to form.</p> <p>7 But you can answer.</p> <p>8 A. I had staff that reported to me do</p> <p>9 some analysis with respect to the ability to get</p> <p>10 prices on some of the securities in the</p> <p>11 analysis, yes.</p> <p>12 Q. And what did they report to you?</p> <p>13 MS. TAGGART: I'm going to object and</p> <p>14 instruct you not to answer on</p> <p>15 attorney-client and work product privilege.</p> <p>16 BY MR. STERN:</p> <p>17 Q. Was your staff able to obtain</p> <p>18 publicly available pricing information for all</p> <p>19 of the securities on the spreadsheets?</p> <p>20 MS. TAGGART: Hold on.</p> <p>21 You can answer that yes or no.</p> <p>22 A. No.</p> <p>23 Q. Do you recall approximately what</p> <p>24 percentage of the securities your staff was able</p> <p>25 to obtain publicly available pricing information</p>

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1 M. Fazio
2 for?
3 MS. TAGGART: I'm going to object and
4 instruct not to answer on privilege.
5 BY MR. STERN:
6 Q. I ask you to please look at the third
7 page of this exhibit. Right there (indicating),
8 that summary sheet. It may be the second page
9 of your copy.
10 A. It's the second page, yes.
11 Q. The second page of the exhibit.
12 At the top it has a line that reads,
13 "Collateral" and then next to that it says,
14 "Market Value."
15 Do you see that?
16 A. Yes, I do.
17 Q. Is this a summary sheet that you
18 reviewed at the time that you received it?
19 A. Yes.
20 Q. And what was your understanding at
21 that time concerning the information reflected
22 here?
23 MS. TAGGART: Object to form.
24 I'm sorry. At what time?
25 BY MR. STERN:

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1 M. Fazio
2 being transferred are cash and the cash was said
3 to be \$7 billion. If the final securities that
4 were going over in cash in total, they were
5 looking at it and trying to figure out what
6 would be transferred. So it was indicated that
7 at the time it was \$7 billion of cash they
8 thought would be being transferred.
9 Q. And when you and others on behalf of
10 the committee learned that, did you discuss that
11 fact with anyone representing the estate?
12 MS. TAGGART: Object to form.
13 You can answer.
14 A. We would -- we had discussions with
15 Jim Seery with respect to the transaction and
16 the securities and cash.
17 Q. Did anybody acting on behalf of the
18 committee object that this cash was being
19 transferred in connection with the transaction?
20 MS. TAGGART: Objection. Foundation.
21 THE WITNESS: Repeat the question?
22 Sorry.
23 (Question was read back as follows:
24 "QUESTION: Did anybody acting on
25 behalf of the committee object that this

1 M. Fazio
2 Q. At the time you received this.
3 MS. TAGGART: You can answer.
4 A. On the Sunday that I received this,
5 and I don't know exactly what time, but my
6 understanding after having different discussions
7 with people that the market values were market
8 values associated with collateral earlier in the
9 week.
10 Q. And were you ever told who assigned
11 those market values to the collateral?
12 A. I was told that it came off of the
13 Lehman system earlier in the week.
14 Q. Were you given a date earlier in the
15 week?
16 A. I was given Monday, Tuesday time
17 periods.
18 Q. And with respect to the line that
19 says "TP cash" and has a figure of \$7 billion
20 next to that, what understanding did you have
21 concerning that information?
22 A. There was discussion of whether or
23 not securities or cash were being transferred
24 from JPMorgan associated with the transaction,
25 and it was unclear whether securities would be

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1 M. Fazio
2 cash was being transferred in connection
3 with the transaction?")
4 A. We were looking at the transaction as
5 a whole, so there were liabilities being assumed
6 and assets being transferred, so there was
7 discussion with respect to the transaction and
8 the components of the transaction and
9 understanding what was being transferred.
10 So since we did not have a detailed
11 schedule that people had said had been a final
12 schedule of securities or cash being
13 transferred, we had nothing to object to at that
14 time.
15 Q. At the time you received this
16 information which reflects a transfer of cash of
17 \$7 billion, was it your understanding that such
18 cash would be transferred to Barclays or had
19 been transferred to Barclays?
20 MR. MILLS: Object to the form.
21 A. My understanding was that the estate
22 and Barclays were trying to figure out exactly
23 what securities they had and what was being
24 transferred associated with the transaction over
25 the weekend.

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<p>1 M. Fazio</p> <p>2 Q. Were you ever told that one possible</p> <p>3 approach to the transaction was that Barclays</p> <p>4 would retain the \$7 billion in cash?</p> <p>5 A. If the total securities were not as</p> <p>6 represented, the value of the securities was not</p> <p>7 as total represented, there would have to be a</p> <p>8 cash component to equate to the transaction that</p> <p>9 was represented court.</p> <p>10 Q. And that was cash from the LBI</p> <p>11 estate, correct?</p> <p>12 MS. TAGGART: Object to form.</p> <p>13 A. I'm not sure where the cash and who</p> <p>14 the repository of the cash was with and the</p> <p>15 rightful owner of it, but it was, from the</p> <p>16 estate, cash would have been had to have come</p> <p>17 from the estate for the transaction.</p> <p>18 Q. And did the committee or anybody</p> <p>19 acting on behalf of the committee or anyone else</p> <p>20 in attendance that weekend, to your knowledge,</p> <p>21 object to the possibility that such cash would</p> <p>22 be included in the transaction?</p> <p>23 MS. TAGGART: Object to form and</p> <p>24 foundation.</p> <p>25 BY MR. STERN:</p>	<p>1 M. Fazio</p> <p>2 Q. If you remember.</p> <p>3 A. The transaction was discussed as a</p> <p>4 whole so individual components, since we did not</p> <p>5 have a detailed schedule at all throughout this</p> <p>6 of any detail which showed the final securities</p> <p>7 in cash being transferred, there was nothing to</p> <p>8 object to.</p> <p>9 Q. This makes reference to \$7 billion in</p> <p>10 cash.</p> <p>11 My question is this: Did anyone, to</p> <p>12 your knowledge, object to the transfer of such</p> <p>13 cash over the preclosing weekend?</p> <p>14 MS. TAGGART: Objection. Asked and</p> <p>15 answered. Form, foundation.</p> <p>16 BY MR. STERN:</p> <p>17 Q. You can answer.</p> <p>18 A. Since the transaction is taken as a</p> <p>19 whole, we were not given final cash numbers or</p> <p>20 securities being transferred so there was</p> <p>21 nothing to object to.</p> <p>22 Q. I understand that.</p> <p>23 Did anyone object, to your knowledge,</p> <p>24 to the possibility that \$7 billion in cash was</p> <p>25 to be transferred as a part of the transaction?</p>
Page 24	Page 25
<p>1 M. Fazio</p> <p>2 MS. TAGGART: It's been now asked and</p> <p>3 answered four times.</p> <p>4 I object to form and foundation.</p> <p>5 You can answer it one more time.</p> <p>6 MR. STERN: I don't think it's been</p> <p>7 answered.</p> <p>8 Can you repeat the question?</p> <p>9 (Question was read back as follows:</p> <p>10 "QUESTION: Did anyone object, to</p> <p>11 your knowledge, to the possibility that</p> <p>12 \$7 billion in cash was to be transferred as</p> <p>13 a part of the transaction?")</p> <p>14 A. As I've stated before, since the</p> <p>15 transaction as a whole, we did not have detail</p> <p>16 of which securities were being transferred or</p> <p>17 what cash was being transferred with the</p> <p>18 securities to offset the liabilities being</p> <p>19 assumed by Barclays, we did not have anything to</p> <p>20 object to at the time associated with cash or</p> <p>21 securities being transferred.</p> <p>22 Q. You had a summary sheet indicating</p> <p>23 that \$7 billion in cash was included as part of</p> <p>24 the assets being transferred to Barclays.</p> <p>25 And my question is this: Did anyone,</p>	<p>1 M. Fazio</p> <p>2 to your knowledge, object to the inclusion of</p> <p>3 that cash in the transaction?</p> <p>4 MS. TAGGART: Object to --</p> <p>5 MR. MILLS: Objection to the form.</p> <p>6 MS. TAGGART: Object to the form, to</p> <p>7 the preface. It's argumentive. It's been</p> <p>8 asked and answered. And also to</p> <p>9 foundation.</p> <p>10 A. I believe I've answered the question</p> <p>11 numerous times, but I'll answer it again for</p> <p>12 you.</p> <p>13 When we looked at the detail and we</p> <p>14 had discussions about the detail of securities</p> <p>15 and cash being transferred, we did not have a</p> <p>16 final list of securities or cash being</p> <p>17 transferred associated with the transaction and</p> <p>18 so there was nothing to object to associated</p> <p>19 with the transaction since we did not have</p> <p>20 information on the final securities or cash</p> <p>21 being transferred.</p> <p>22 Q. At some point did Houlihan learn that</p> <p>23 the \$7 billion in cash would be included in the</p> <p>24 transaction?</p> <p>25 MS. TAGGART: Object to foundation.</p>

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1 M. Fazio
2 MR. MILLS: Objection.
3 MS. TAGGART: Go ahead.
4 A. I believe that subsequently and
5 subsequent information that came out and
6 Barclays indicating that they had not received
7 the cash, it had come to light that there was
8 \$7 billion that was being transferred associated
9 with the transaction that had not gotten
10 transferred that Barclays was claiming that was
11 owed to them.
12 Q. Did the committee learn at any point
13 that the \$7 billion in cash had initially been
14 transferred to Barclays but then had been
15 removed by JPMorgan?
16 MS. TAGGART: Object to form.
17 Foundation.
18 A. I'm not aware.
19 Q. You don't know?
20 A. I don't know.
21 Q. Okay. Going back to the time when
22 you received Exhibit 461B and saw the reference
23 to \$7 billion in cash, do you have any specific
24 recollection of anyone acting on behalf of the
25 Creditors Committee telling representatives of

1 M. Fazio
2 Lehman or Barclays that that cash should not be
3 included in the final transaction?
4 MS. TAGGART: Objection. Asked and
5 answered. Form, foundation.
6 BY MR. STERN:
7 Q. Do you have any such recollection?
8 A. As I have stated before, we were
9 given this sheet. It was indicated that we did
10 not have the final securities being transferred
11 nor the cash balance associated with the
12 transaction, so there was nothing to object to
13 since we did not have the final form and
14 securities that were being transferred.
15 Q. Putting aside the question of the
16 market value of the securities listed in
17 Exhibit 461B, did anyone indicate to you over
18 the preclosing weekend that Barclays would not
19 receive the securities listed in Exhibit 461B?
20 MS. TAGGART: Object to form.
21 A. There was discussion that the
22 Barclays people and the estate people were
23 trying to reconcile the exact securities that
24 were being transferred because they had to
25 reconcile what securities remained in the

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1 M. Fazio
2 possession of Lehman, and so there was question
3 as to which securities would finally be
4 transferred associated with the transaction
5 because they had to make sure that the
6 securities were in the possession of Lehman
7 Brothers.
8 Q. Did you have an understanding that
9 certain securities had already been transferred
10 to Barclays as of that preclosing weekend?
11 A. At the time, I was not aware that
12 some securities might have been transferred to
13 Barclays at that time.
14 Q. Were you familiar with the fact that
15 Barclays had replaced the Fed's financing of LBI
16 prior to the preclosing weekend?
17 MS. TAGGART: Object to form.
18 A. Not prior to the preclosing weekend.
19 During the weekend I became aware of
20 that, yes.
21 Q. During the September 19th hearing, do
22 you recall Mr. Miller informing the court that
23 Barclays had replaced the Fed's financing and
24 received the securities that had been pledged to
25 the Fed?

1 M. Fazio
2 MS. TAGGART: Object to form.
3 BY MR. STERN:
4 Q. Do you recall that?
5 A. I recall discussions over the weekend
6 about Barclays stepping into the shoes of the
7 Fed.
8 I don't remember if it was at the
9 hearing on Friday or over the weekend, but I was
10 not sure whether or not that transaction also
11 had taken place or that it was stepping into the
12 shoes and had guaranteed to step into the shoes
13 to the Fed, and whether or not the securities
14 had been transferred and whether Barclays had
15 actually paid off the Fed. I was unaware
16 whether or not that had happened on the Friday
17 or over the weekend.
18 Q. Over the weekend did you learn that
19 it had happened?
20 A. There was --
21 MS. TAGGART: Object to form.
22 A. There was discussion that it had
23 happened, but there was still a lot of
24 reconciliations going on of what securities that
25 Barclays was getting associated with that

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<p>1 M. Fazio</p> <p>2 transaction also.</p> <p>3 Q. But with respect to the securities</p> <p>4 that had already been transferred, did you have</p> <p>5 an understanding that this list contained in</p> <p>6 Exhibit 461B reflected those securities?</p> <p>7 A. No. I had an understanding that</p> <p>8 these were securities earlier in the week, that</p> <p>9 thought that Lehman had that they were being</p> <p>10 transferred over to Barclays as part of the Fed</p> <p>11 transaction and the whole transaction that was</p> <p>12 being discussed on court on Friday.</p> <p>13 Q. You did not have an understanding</p> <p>14 that the securities listed in 461B had already</p> <p>15 been transferred to Barclays as a part of its</p> <p>16 replacement of the Fed?</p> <p>17 A. No.</p> <p>18 MS. TAGGART: Asked and answered.</p> <p>19 BY MR. STERN:</p> <p>20 Q. Okay. At some point did you learn</p> <p>21 that?</p> <p>22 A. I still to this day do not know or</p> <p>23 have a detailed list from Barclays or the estate</p> <p>24 of the exact securities transferred as of today</p> <p>25 and the market values of those securities that</p>	<p>1 M. Fazio</p> <p>2 were being transferred on Friday, the 19th or on</p> <p>3 Monday, the 21st.</p> <p>4 I'm sure Monday is the 22nd. I</p> <p>5 apologize.</p> <p>6 Q. So it's your testimony that as of</p> <p>7 today you still do not have a complete list of</p> <p>8 the securities that Barclays received in</p> <p>9 connection with its replacement of the Fed. Is</p> <p>10 that your testimony?</p> <p>11 A. The testimony and I think what I just</p> <p>12 said was that we do not have a listing from</p> <p>13 Barclays of all the securities that they have</p> <p>14 received associated with this transaction and</p> <p>15 the market value of those securities as of the</p> <p>16 close of the business on the 19th. As of today</p> <p>17 we do not have that listing.</p> <p>18 Q. Did you ever receive Schedule A to</p> <p>19 the Clarification Letter?</p> <p>20 MS. TAGGART: Object to form.</p> <p>21 And now you're asking him personally?</p> <p>22 Go ahead.</p> <p>23 A. Sorry. Repeat the question. I'm</p> <p>24 sorry.</p> <p>25 Q. Did you ever receive Schedule A to</p>
Page 32	Page 33
<p>1 M. Fazio</p> <p>2 the Clarification Letter?</p> <p>3 A. I have received what has been</p> <p>4 indicated to be Schedule A of the Clarification</p> <p>5 Letter, yes.</p> <p>6 Q. Have you received Annex A to the</p> <p>7 settlement between LBI, JPMorgan and Barclays --</p> <p>8 MS. TAGGART: Object to form.</p> <p>9 BY MR. STERN:</p> <p>10 Q. -- concerning the \$7 billion</p> <p>11 shortfall?</p> <p>12 A. I would have to look at it to see</p> <p>13 what annex A is, but I might have seen it but</p> <p>14 I'd have to see it in front of me.</p> <p>15 Q. Okay.</p> <p>16 MS. TAGGART: Jack, can we take a</p> <p>17 quick break?</p> <p>18 MR. STERN: Sure.</p> <p>19 MS. TAGGART: I'll just be a couple</p> <p>20 minutes.</p> <p>21 THE VIDEOGRAPHER: The time is 10:04</p> <p>22 a.m. We're going off the record.</p> <p>23 (Recess is taken.)</p> <p>24 THE VIDEOGRAPHER: The time is 10:07</p> <p>25 a.m. We're back on the record.</p>	<p>1 M. Fazio</p> <p>2 BY MR. STERN:</p> <p>3 Q. Focusing again on the second page of</p> <p>4 Exhibit 461B, it lists a total amount there of</p> <p>5 \$49.9 billion.</p> <p>6 Do you see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. At some point over the preclosing</p> <p>9 weekend did you learn the amount of the</p> <p>10 financing that Barclays had assumed in replacing</p> <p>11 the Fed, the loan amount that is?</p> <p>12 A. I was told that it was \$45.5 billion,</p> <p>13 yes.</p> <p>14 Q. And over that preclosing weekend, did</p> <p>15 you raise any questions concerning the</p> <p>16 difference between that \$45 billion amount and</p> <p>17 this \$49.9 billion amount?</p> <p>18 A. Yes.</p> <p>19 Q. With whom did you raise those</p> <p>20 questions?</p> <p>21 A. I had discussions Jim Seery and</p> <p>22 discussions with Mr. Klein.</p> <p>23 Q. And what did you discuss on that</p> <p>24 subject with Mr. Seery?</p> <p>25 A. I discussed wanting a detailed</p>

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<p>1 M. Fazio</p> <p>2 listing of the collateral that was being</p> <p>3 transferred associated with the transaction and</p> <p>4 the market values associated with the securities</p> <p>5 being transferred.</p> <p>6 Q. What types of -- withdrawn.</p> <p>7 What market values did you want?</p> <p>8 A. I wanted the closing market values as</p> <p>9 of September 19th.</p> <p>10 Q. From Lehman?</p> <p>11 A. Yes.</p> <p>12 Q. And did you ever discuss with</p> <p>13 Mr. Seery any concern about a \$5 billion</p> <p>14 mismatch or difference between the \$49.9 billion</p> <p>15 figure on Exhibit 461B and the \$45 billion</p> <p>16 amount of the loan?</p> <p>17 MS. TAGGART: Object to form.</p> <p>18 THE WITNESS: Repeat the question?</p> <p>19 (Question was read back as follows:</p> <p>20 "QUESTION: And did you ever discuss</p> <p>21 with Mr. Seery any concern about a</p> <p>22 \$5 billion mismatch or difference between</p> <p>23 the \$49.9 billion figure on Exhibit 461B</p> <p>24 and the \$45 billion amount of the loan?")</p> <p>25 A. We discussed the fair value of the</p>	<p>1 M. Fazio</p> <p>2 securities being transferred associated with the</p> <p>3 transaction. It was more of a discussion of the</p> <p>4 assets being transferred as opposed to the</p> <p>5 \$47.7 billion of securities that were supposed</p> <p>6 to be transferred as part of the transaction.</p> <p>7 Q. My question focuses on the</p> <p>8 \$49.9 billion figure that is listed on</p> <p>9 Exhibit 461B.</p> <p>10 Did you have any discussion with</p> <p>11 Mr. Seery concerning the difference between that</p> <p>12 amount and the \$45 billion amount of the loan?</p> <p>13 MS. TAGGART: Object to form. Asked</p> <p>14 and answered.</p> <p>15 A. We had discussions about the assets</p> <p>16 being transferred, the liabilities being assumed</p> <p>17 as part of the transaction, yes.</p> <p>18 Q. And were you able, was Houlihan able,</p> <p>19 based on the information it had available to it,</p> <p>20 to come to any assessment of the fair value of</p> <p>21 the securities that were listed on Exhibit 461B?</p> <p>22 MS. TAGGART: You can answer that yes</p> <p>23 or no or I don't know.</p> <p>24 A. No.</p> <p>25 Q. And is that because public pricing</p>
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<p>1 M. Fazio</p> <p>2 information was not available concerning many of</p> <p>3 the securities listed?</p> <p>4 MS. TAGGART: I'm going to object and</p> <p>5 instruct not to answer on attorney-client</p> <p>6 and work product privilege.</p> <p>7 BY MR. STERN:</p> <p>8 Q. Approximately when over this</p> <p>9 preclosing weekend did you have your discussions</p> <p>10 with Mr. Seery?</p> <p>11 A. I believe it was on Sunday. I don't</p> <p>12 have a time.</p> <p>13 Q. Let me show you a document that we've</p> <p>14 previously marked as Exhibit 460B.</p> <p>15 MR. STERN: We do not have many</p> <p>16 copies of this given the size but...</p> <p>17 (Document review.)</p> <p>18 BY MR. STERN:</p> <p>19 Q. This appears to be an email from</p> <p>20 David Murgio at Weil, Gotshal to Bob Moore at</p> <p>21 Milbank, and it attaches two documents, two</p> <p>22 Excel spreadsheets; one labeled "Schedule A" and</p> <p>23 one labeled "Schedule B."</p> <p>24 Did you understand in connection with</p> <p>25 the closing of the sale transaction that there</p>	<p>1 M. Fazio</p> <p>2 was a Schedule A listing certain securities and</p> <p>3 a Schedule B listing certain securities?</p> <p>4 A. Yes.</p> <p>5 Q. And what was your understanding of</p> <p>6 what Schedule A was?</p> <p>7 MS. TAGGART: Object to form.</p> <p>8 BY MR. STERN:</p> <p>9 Q. Or what Schedule A was intended to</p> <p>10 be.</p> <p>11 MS. TAGGART: Same objection.</p> <p>12 A. Schedule A was and Schedule B were to</p> <p>13 represent securities being transferred to</p> <p>14 Barclays as part of the sale.</p> <p>15 Q. And did Houlihan do any further</p> <p>16 review of Schedule A and Schedule B after the</p> <p>17 closing?</p> <p>18 MS. TAGGART: I'm going to object and</p> <p>19 instruct not to answer on privilege.</p> <p>20 BY MR. STERN:</p> <p>21 Q. After the closing, did Houlihan have</p> <p>22 any discussions with anyone representing Lehman</p> <p>23 or Barclays concerning the identity or value of</p> <p>24 the securities listed on Schedule A and Schedule</p> <p>25 B?</p>

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<p>1 M. Fazio</p> <p>2 A. Yes.</p> <p>3 Q. When was the first such discussion</p> <p>4 with representatives of Lehman?</p> <p>5 A. I don't have an exact recollection,</p> <p>6 but it would have been in the week or following</p> <p>7 that week, so it would have been the week of</p> <p>8 September 22nd or September 29th.</p> <p>9 Q. And what was the substance of those</p> <p>10 discussions with Lehman representatives?</p> <p>11 A. The substance of those discussions</p> <p>12 were to attempt to get a detailed listing of the</p> <p>13 securities being transferred associated with the</p> <p>14 transaction, as well as the market values as of</p> <p>15 the closing date.</p> <p>16 Q. And with whom did you have those</p> <p>17 discussions?</p> <p>18 A. We had discussions with Paolo</p> <p>19 Tonucci. We had discussions with the A&M</p> <p>20 representatives throughout the following</p> <p>21 two weeks.</p> <p>22 Q. And did Houlihan in those discussions</p> <p>23 express any concerns relating to the value of</p> <p>24 the securities on Schedule A?</p> <p>25 MS. TAGGART: Object to form.</p>	<p>1 M. Fazio</p> <p>2 A. We raised concerns of not having a</p> <p>3 detailed list of the securities or the market</p> <p>4 values associated with that transaction.</p> <p>5 Q. Did Houlihan do anything to itself</p> <p>6 evaluate the value of the securities on the</p> <p>7 Schedule A listing that Houlihan did have at</p> <p>8 that time?</p> <p>9 MS. TAGGART: I'm going to object and</p> <p>10 instruct not to answer on work product and</p> <p>11 attorney-client privilege.</p> <p>12 BY MR. STERN:</p> <p>13 Q. After the closing, did you</p> <p>14 participate in any discussions with Weil,</p> <p>15 Gotshal concerning the value of the securities</p> <p>16 transferred to Barclays as a part of the Fed</p> <p>17 replacement?</p> <p>18 MS. TAGGART: Object to form.</p> <p>19 You can answer.</p> <p>20 A. I do not believe so.</p> <p>21 Q. Do you know whether anyone else from</p> <p>22 Houlihan did?</p> <p>23 MS. TAGGART: Object to form.</p> <p>24 Foundation.</p> <p>25 A. I do not know.</p>
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<p>1 M. Fazio</p> <p>2 Q. Do you know whether after the closing</p> <p>3 Houlihan had any discussions with anyone acting</p> <p>4 on behalf of Lehman concerning the difference</p> <p>5 between the repo loan amount and the value of</p> <p>6 the securities listed on the Schedule A?</p> <p>7 MS. TAGGART: Object to form.</p> <p>8 A. We had numerous conversations with</p> <p>9 the Alvarez & Marsal people with respect to the</p> <p>10 value of the securities and the identification</p> <p>11 of those securities that were being transferred</p> <p>12 as part of the transaction.</p> <p>13 Q. And your best recollection is that</p> <p>14 those discussions with Alvarez took place</p> <p>15 sometime after the closing?</p> <p>16 A. Yes.</p> <p>17 Q. And that would have been the week of</p> <p>18 September 22nd or the week of September 29th?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any recollection one way</p> <p>21 or the other concerning whether those</p> <p>22 discussions began the week of September 22nd or</p> <p>23 the week of September 29th?</p> <p>24 A. I believe they would have began the</p> <p>25 week of September 22nd, but I don't have</p>	<p>1 M. Fazio</p> <p>2 specific dates.</p> <p>3 Q. And in those discussions with</p> <p>4 Alvarez, did Houlihan raise any concern about a</p> <p>5 \$5 billion mismatch between the amount of the</p> <p>6 repo loan, \$45 billion, and the market value</p> <p>7 listed in Exhibit 461B of \$49.9 billion?</p> <p>8 MS. TAGGART: Object to form.</p> <p>9 A. We raised questions as to which</p> <p>10 securities and the value of those securities</p> <p>11 that were being transferred associated with the</p> <p>12 transaction.</p> <p>13 Q. Did you raise any concerns relating</p> <p>14 to the difference between the loan amount and</p> <p>15 the value of the securities that were</p> <p>16 transferred in connection with that repo</p> <p>17 replacement?</p> <p>18 MS. TAGGART: Object to form.</p> <p>19 A. We were concerned with the value of</p> <p>20 all the securities that were being transferred,</p> <p>21 as well as the loan that was being assumed as</p> <p>22 part of this transaction, yes.</p> <p>23 Q. And at that point in time after the</p> <p>24 closing, did Houlihan do anything to access</p> <p>25 publicly available information from Bloomberg or</p>

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<p>1 M. Fazio</p> <p>2 other sources concerning the value of the</p> <p>3 securities on the list that you had at that</p> <p>4 time?</p> <p>5 MS. TAGGART: I'm going to object and</p> <p>6 instruct not to answer on privilege.</p> <p>7 BY MR. STERN:</p> <p>8 Q. Let me show you a document that's</p> <p>9 previously been marked as Exhibit 504.</p> <p>10 Do you recognize this series of</p> <p>11 emails?</p> <p>12 A. Yes.</p> <p>13 Q. And what are they?</p> <p>14 A. They are emails to and from Luc</p> <p>15 Despins associated with request for information</p> <p>16 from Lori Fife at Weil, Gotshal.</p> <p>17 Q. Looking at the first page of this</p> <p>18 exhibit at the bottom, there is an email from</p> <p>19 Mr. Despins to Lori Fife copying you and</p> <p>20 Mr. Geer and Mr. Bell, and he writes, "Lori,</p> <p>21 this is not in connection with sealing motion,</p> <p>22 although I want to know more about the schedules</p> <p>23 before that issue is up before the court, but</p> <p>24 rather our concern is with respect to the</p> <p>25 securities which were transferred. Houlihan has</p>	<p>1 M. Fazio</p> <p>2 reviewed them and cannot even come close to the</p> <p>3 amount which was announced in court. I think it</p> <p>4 was \$47.4 billion. And there is also a</p> <p>5 discrepancy on the liability side, although it</p> <p>6 could be much smaller than the issue on the</p> <p>7 asset side. Houlihan's review would indicate</p> <p>8 that the securities transferred could be worth</p> <p>9 billions more than the \$47.4 billion. There may</p> <p>10 very well be a logical explanation for all of</p> <p>11 this, which is why the first meeting is just to</p> <p>12 explore the issues."</p> <p>13 You see that Mr. Despins says that</p> <p>14 "Houlihan has reviewed them and cannot even come</p> <p>15 close to the amount which was announced in</p> <p>16 court."</p> <p>17 What analysis had Houlihan done that</p> <p>18 led Mr. Despins to make that comment.</p> <p>19 MS. TAGGART: I'm going to object and</p> <p>20 instruct not to answer on attorney-client</p> <p>21 and work product privilege.</p> <p>22 BY MR. STERN:</p> <p>23 Q. Mr. Despins tells Weil, Gotshal that</p> <p>24 Houlihan had done an analysis of the securities.</p> <p>25 Do you see that?</p>
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<p>1 M. Fazio</p> <p>2 A. Yes.</p> <p>3 Q. What analysis had Houlihan done?</p> <p>4 MS. TAGGART: Same objection and</p> <p>5 instruction.</p> <p>6 BY MR. STERN:</p> <p>7 Q. What figure for market value had</p> <p>8 Houlihan arrived at as a result of its analysis?</p> <p>9 MS. TAGGART: I'm going to object and</p> <p>10 instruct not to answer on privilege.</p> <p>11 BY MR. STERN:</p> <p>12 Q. Mr. Despins writes, "Houlihan's</p> <p>13 review would indicate that the securities</p> <p>14 transferred could be worth billions more than</p> <p>15 the \$47.4 billion."</p> <p>16 Do you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Do you recall how many billions more</p> <p>19 Houlihan's review indicated at the time?</p> <p>20 MS. TAGGART: Objection. And</p> <p>21 instruct you not to answer on</p> <p>22 attorney-client and work product</p> <p>23 privileges.</p> <p>24 BY MR. STERN:</p> <p>25 Q. Was Houlihan's review at the time</p>	<p>1 M. Fazio</p> <p>2 reflected in writing?</p> <p>3 MS. TAGGART: You can answer yes or</p> <p>4 no.</p> <p>5 A. We would have had written material</p> <p>6 associated with our work.</p> <p>7 Q. And that written material, according</p> <p>8 to Mr. Despins, would indicate that the</p> <p>9 securities transferred could be worth billions</p> <p>10 more than the \$47.4 billion; is that right?</p> <p>11 MS. TAGGART: I'm going to object and</p> <p>12 instruct not to answer on privilege.</p> <p>13 BY MR. STERN:</p> <p>14 Q. Following this series of emails, was</p> <p>15 there a meeting?</p> <p>16 MS. TAGGART: Object to form.</p> <p>17 A. There were follow-up meetings</p> <p>18 subsequently with the estate and -- I'll see,</p> <p>19 this is October 15th. There was always constant</p> <p>20 meetings between the estate and the advisors.</p> <p>21 Q. I understand that, but with respect</p> <p>22 to this specific request concerning Houlihan's</p> <p>23 review indicating that the securities</p> <p>24 transferred could be worth billions more than</p> <p>25 the \$47.4 billion, was there a follow-up</p>

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<p>1 M. Fazio 2 meeting? 3 MS. TAGGART: Object to form and 4 foundation. 5 A. I do not believe that between the 6 parties that are listed here there was a meeting 7 that was set up with respect to this email 8 chain. 9 Q. Was there a meeting between anyone 10 else acting on behalf of the committee or anyone 11 else acting on behalf of Lehman concerning that 12 issue? 13 MS. TAGGART: Object to form and 14 foundation. 15 A. We would have meetings with the 16 estate on a regular basis and this was one of 17 the topics we would continually ask them to get 18 a detailed listing of the securities and the 19 market values as to the close of the business 20 on the 19th. 21 Q. Did the estate ever provide Houlihan 22 with any information that indicated that the 23 securities transferred were not worth billions 24 more than the \$47.4 billion? 25 MS. TAGGART: Object to form.</p>	<p>1 M. Fazio 2 Foundation. 3 Could you limit that at all by time? 4 BY MR. STERN: 5 Q. Can you answer? 6 THE WITNESS: Can you repeat the 7 question then? 8 MS. TAGGART: Okay. You can answer 9 yes or no to that. 10 And you can reread the question 11 again. 12 (Question was read back as follows: 13 "QUESTION: Did the estate ever 14 provide Houlihan with any information that 15 indicated that the securities transferred 16 were not worth billions more than the \$47.4 17 billion?") 18 A. To my knowledge, I have never 19 received anything from the estate that has 20 detailed the final securities transferred and 21 the market value as of the close of business on 22 the 19th. 23 Q. Aside from this email request and 24 whatever meetings followed from it, what did 25 Houlihan do to address any concern that it had</p>
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<p>1 M. Fazio 2 as a result of its review indicating that the 3 securities transferred could be worth billions 4 more than \$47.4 billion? 5 MS. TAGGART: Object to form, 6 foundation and also privilege. 7 You should not disclose anything you 8 did either internally with Houlihan or in 9 correspondence with your counsel. 10 But if you took any actions that you 11 know of with anyone other than that, go 12 ahead and answer. 13 A. I had numerous meetings with the 14 Alvarez & Marsal people to continually ask to 15 follow up and get information associated with 16 the transaction, including the final securities 17 that actually were transferred and the fair 18 value of those on the 19th. 19 Q. And what types of information did you 20 receive? 21 A. I received no final listing from 22 anybody associated with the transaction. 23 Q. What types of information did you 24 receive? 25 A. I received no information that had</p>	<p>1 M. Fazio 2 detailed information associated with the 3 transaction. 4 Q. I'm not asking what you did not 5 receive. 6 I'm asking what did you receive. 7 A. All we had were discussions. I never 8 received any of their work products associated 9 with any detailed analysis that they may have 10 been doing. 11 To the best of my knowledge, they 12 have not received a final listing either from 13 anybody associated with the transaction, 14 associated with which securities and the fair 15 market value as of the 19th. 16 Q. Did that concern you as of late 17 September, early October of 2008? 18 MS. TAGGART: Object to form. 19 A. Yes. 20 Q. What did you do about that concern? 21 MS. TAGGART: Objection. Form, 22 foundation. Asked and answered. 23 And I'll make the same privilege 24 instruction. If you have anything to add 25 of anything you did besides working</p>

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<p>1 M. Fazio</p> <p>2 internally at Houlihan or in communications</p> <p>3 with your counsel.</p> <p>4 A. I had numerous discussions with the</p> <p>5 Alvarez & Marsal people.</p> <p>6 Q. Did you feel they were not responding</p> <p>7 to your concern?</p> <p>8 MS. SCHAFFER: Objection to the form.</p> <p>9 MS. TAGGART: Same objection.</p> <p>10 A. I felt that they were taking my</p> <p>11 concern and my request very seriously and they</p> <p>12 were trying to get the same information I was.</p> <p>13 Q. And describe for me exactly what your</p> <p>14 concern was.</p> <p>15 MS. TAGGART: Object to form.</p> <p>16 A. When you have a transaction, you</p> <p>17 usually have a detailed listing of every asset</p> <p>18 and the assumed liabilities associated with the</p> <p>19 transaction, and the fair market value of those</p> <p>20 assets and liabilities.</p> <p>21 We did not have this and still do not</p> <p>22 have this associated with this transaction.</p> <p>23 Q. So it's your testimony that as of</p> <p>24 today you still do not have that information.</p> <p>25 MS. TAGGART: Object to form.</p>	<p>1 M. Fazio</p> <p>2 Foundation.</p> <p>3 A. Absolutely.</p> <p>4 Q. Is there anything that you've</p> <p>5 received between September 2008 and today that</p> <p>6 has provided you with any more information</p> <p>7 concerning the purchased assets and the assumed</p> <p>8 liabilities and their respective value?</p> <p>9 MS. TAGGART: Object to form and</p> <p>10 privilege as currently worded, so I'll</p> <p>11 instruct not to answer on attorney-client</p> <p>12 and work product.</p> <p>13 BY MR. STERN:</p> <p>14 Q. Is there anything you've received</p> <p>15 from parties other than the committee or counsel</p> <p>16 to the committee or other people from Houlihan</p> <p>17 that has provided you with that information?</p> <p>18 MS. TAGGART: Object to form.</p> <p>19 MR. STERN: Let me rephrase it.</p> <p>20 BY MR. STERN:</p> <p>21 Q. Aside from communications with</p> <p>22 counsel, aside from communications with</p> <p>23 committee or within Houlihan, is there anything</p> <p>24 that you've received since September 2008 that</p> <p>25 has provided you with more information</p>
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<p>1 M. Fazio</p> <p>2 concerning the assets purchased and the</p> <p>3 liabilities assumed? Is there anything?</p> <p>4 MS. TAGGART: Object to form.</p> <p>5 A. I may have seen information that</p> <p>6 Alvarez & Marsal was working on associated with</p> <p>7 some of the liabilities, the cure amounts and</p> <p>8 analysis of that, but nothing with respect to</p> <p>9 the detailed analysis of the securities being</p> <p>10 transferred and their fair market value.</p> <p>11 Q. So it's your testimony that between</p> <p>12 September of 2008 and today, you have not</p> <p>13 received any further information from either</p> <p>14 Lehman or Barclays concerning the assets</p> <p>15 purchased and the liabilities assumed and their</p> <p>16 respective values.</p> <p>17 MS. TAGGART: Objection.</p> <p>18 Argumentative.</p> <p>19 BY MR. STERN:</p> <p>20 Q. Is that your testimony?</p> <p>21 MS. TAGGART: I object to form.</p> <p>22 Mischaracterizes the testimony.</p> <p>23 If you can understand it, you can</p> <p>24 answer it.</p> <p>25 A. Repeat the question.</p>	<p>1 M. Fazio</p> <p>2 MR. STERN: I do have --let me just</p> <p>3 before you repeat the question, I just have</p> <p>4 to note for the record that these</p> <p>5 objections violate the local rules, and</p> <p>6 I've been very tolerant of these speaking</p> <p>7 objections, but going forward I would</p> <p>8 appreciate it if you would comply with the</p> <p>9 local rules, Counsel.</p> <p>10 MS. TAGGART: I think I'm complying</p> <p>11 with the local rules and I don't think that</p> <p>12 you're supposed to be asking him to</p> <p>13 reaffirm his testimony when he just</p> <p>14 answered the question.</p> <p>15 MR. STERN: Can you repeat the</p> <p>16 question?</p> <p>17 (Question was read back as follows:</p> <p>18 "QUESTION: So it's your testimony</p> <p>19 that between September of 2008 and today,</p> <p>20 you have not received any further</p> <p>21 information from either Lehman or Barclays</p> <p>22 concerning the assets purchased and the</p> <p>23 liabilities assumed and their respective</p> <p>24 values?")</p> <p>25 MS. TAGGART: Same objections.</p>

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1 M. Fazio
2 But you can answer.
3 A. To date I have not received from
4 anyone a detailed listing that Barclays and
5 Lehman, the estate, have said these are the
6 final securities and these are their fair market
7 value off of the Lehman systems as of
8 September 19th, 2008, that's correct.
9 Q. Between 2008 and today, have you
10 received any information from Barclays, either
11 directly or through a public sources or through
12 this case, concerning the purchased assets and
13 the assumed liabilities and their respective
14 values?
15 MS. TAGGART: I'm going to object and
16 instruct not to answer on attorney-client
17 and work product privileges, especially
18 where it discusses Houlihan's analysis
19 related to this case.
20 BY MR. STERN:
21 Q. No, my question is only whether you
22 have received anything from Barclays either
23 directly or through filings in this case or
24 public filings.
25 MS. TAGGART: I'll stand by my

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1 M. Fazio
2 document?
3 A. I would have seen it sometime in
4 October of 2008.
5 Q. And skipping the first two pages and
6 looking at the remainder of the document, do you
7 know what that material is?
8 A. It's a summary from Conor Tully,
9 associated with the transaction.
10 Q. Looking at the third page of this
11 exhibit, you see at the bottom it says "Alvarez
12 & Marsal," on the bottom left?
13 A. Yes.
14 Q. And then to the right it says "Draft
15 Barclays Deal Recap"?
16 A. Yes.
17 Q. Do you know whether this summary was
18 prepared by Alvarez?
19 A. I do not know.
20 Q. Looking at this page, do you know
21 when you first received this?
22 A. I would have received or looked at
23 this sometime in October of 2008.
24 Q. And when you received this, did you
25 read it?

1 M. Fazio
2 objection and instruction.
3 BY MR. STERN:
4 Q. Going back to your meetings with
5 Alvarez after the closing, do you recall Alvarez
6 providing Houlihan with any information
7 concerning the Barclays replacement of the Fed
8 repo?
9 A. I'm not sure if they've given us
10 anything with respect to the Fed repo
11 specifically.
12 We have talked about and discussed
13 the whole transaction and trying to get a whole
14 accounting for the entire transaction.
15 Q. After the closing when you met with
16 Alvarez, did FTI participate in some of those
17 meetings?
18 A. They would have been party to some of
19 those meetings.
20 Q. Let's take a look at what has
21 previously been marked as Exhibit 463B.
22 Is this a document that you've seen
23 before?
24 A. Yes, I have.
25 Q. And when did you first see this

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1 M. Fazio
2 A. I would have looked at it, yes.
3 Q. And specifically the third page of
4 the document, the third page of this exhibit,
5 which has a column for "Assets" and a column for
6 "Liabilities," do you see that?
7 A. Yes.
8 Q. Do you recall whether you looked at
9 this at the time?
10 A. Yes.
11 Q. You did.
12 A. Yes.
13 Q. It has a line under the "Assets"
14 column that's labeled "Negotiated Mark Haircut."
15 Do you see that?
16 A. Yes, I do.
17 Q. What was your understanding of that
18 line at the time?
19 A. My understanding and further
20 confirmed is that there was a detailed listing
21 of assets that were going to be transferred.
22 The company had a detailed listing which we had
23 seen previously at the time of the closing which
24 showed that the market value of the assets,
25 which were the market value that was prepared at

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<p>1 M. Fazio</p> <p>2 the beginning of the week, was substantially</p> <p>3 over the market value at the end of the week,</p> <p>4 and that \$5 billion is a number that was an</p> <p>5 approximate number of what they believed the</p> <p>6 market value had declined between the beginning</p> <p>7 of the week and the end of the week associated</p> <p>8 with the assets.</p> <p>9 Q. And who was the "they" that you just</p> <p>10 referred to?</p> <p>11 A. Jim Seery and Mr. Klein, and I would</p> <p>12 imagine the other people that were working with</p> <p>13 Mr. Seery and Mr. Klein.</p> <p>14 Q. And when you received this page that</p> <p>15 refers to the negotiated mark haircut, did you</p> <p>16 have any discussion with Alvarez concerning that</p> <p>17 line?</p> <p>18 A. Absolutely. I've had discussions</p> <p>19 with Alvarez in September and October associated</p> <p>20 with getting a detailed listing of the assets</p> <p>21 and the market value as of the close of business</p> <p>22 on the 19th.</p> <p>23 Q. And what specifically did you discuss</p> <p>24 with Alvarez concerning the negotiated mark</p> <p>25 haircut of \$5 billion?</p>	<p>1 M. Fazio</p> <p>2 A. The discussion was very similar</p> <p>3 consistently throughout this, which we need a</p> <p>4 detail of assets and a detail of the market</p> <p>5 values associated with the transaction, and the</p> <p>6 value of those securities on the 19th of</p> <p>7 September.</p> <p>8 Q. And what did Alvarez tell you</p> <p>9 concerning this line "Negotiated Mark Haircut"?</p> <p>10 A. They did not have a detail of the</p> <p>11 assets and did not have a detail of the assets</p> <p>12 or the detail of the market values as of the</p> <p>13 19th.</p> <p>14 Q. Under that it says, "Assets</p> <p>15 transferred under repo stale marks."</p> <p>16 What was your understanding of the</p> <p>17 term "stale marks" when you received this?</p> <p>18 A. Stale marks referred to the marks</p> <p>19 that were done at the beginning of the week</p> <p>20 associated with the transaction, so it would</p> <p>21 have been the Monday or Tuesday of that week</p> <p>22 where the marks were done.</p> <p>23 Q. And did you discuss with Alvarez</p> <p>24 after the closing, the issue of whether the</p> <p>25 marks were stale?</p>
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<p>1 M. Fazio</p> <p>2 MS. SCHAFFER: Objection to form.</p> <p>3 A. Yes, I did. I indicated, and I think</p> <p>4 I've answered many times, that we have asked</p> <p>5 them to get the updated marks associated with</p> <p>6 the securities that were transferred.</p> <p>7 Q. And what did they tell you about</p> <p>8 their ability to get updated marks from Lehman?</p> <p>9 A. They did not have the systems. The</p> <p>10 systems had been transferred to Barclays and</p> <p>11 Barclays had not given them an updated list of</p> <p>12 the securities that were transferred and the</p> <p>13 market values as of the 19th.</p> <p>14 Q. Were you seeking updated marks as of</p> <p>15 September 19th?</p> <p>16 A. Yes, I was.</p> <p>17 Q. The systems at that time were still</p> <p>18 under the control of Lehman, correct?</p> <p>19 MS. TAGGART: Object to form.</p> <p>20 Foundation.</p> <p>21 A. I do not know -- when you say under</p> <p>22 the control, I do not know what you mean under</p> <p>23 the control of Lehman.</p> <p>24 Q. Well, Barclays had not completed the</p> <p>25 acquisition as of September 19th, correct?</p>	<p>1 M. Fazio</p> <p>2 MS. TAGGART: Object to form and</p> <p>3 foundation.</p> <p>4 A. That's correct.</p> <p>5 Q. Did you ever find out whether Lehman,</p> <p>6 that is, LBI, had updated its marks from</p> <p>7 September 12th, 2008, to September 19th, 2008?</p> <p>8 MS. TAGGART: Object to form and</p> <p>9 foundation and potentially privileged.</p> <p>10 You should disclose any information,</p> <p>11 if any, that you received directly from</p> <p>12 Lehman or its advisors, but if you have</p> <p>13 heard any information related to this from</p> <p>14 counsel, don't answer that.</p> <p>15 THE WITNESS: So repeat the question.</p> <p>16 Sorry.</p> <p>17 (Question was read back as follows:</p> <p>18 "QUESTION: Did you ever find out</p> <p>19 whether Lehman, that is, LBI, had updated</p> <p>20 its marks from September 12th, 2008, to</p> <p>21 September 19th, 2008?")</p> <p>22 A. No, I did not find out.</p> <p>23 MS. TAGGART: I think we'd like a</p> <p>24 break. It's been about an hour.</p> <p>25 MR. STERN: All right. You've asked</p>

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<p>1 M. Fazio</p> <p>2 me to try to complete at a reasonable hour,</p> <p>3 but if we keep on taking breaks, that's</p> <p>4 going to be difficult.</p> <p>5 We can take a break whenever you</p> <p>6 want.</p> <p>7 MS. TAGGART: Okay. Thank you.</p> <p>8 THE VIDEOGRAPHER: The time is 10:49</p> <p>9 a.m. We're going off the record.</p> <p>10 (Recess taken.)</p> <p>11 THE VIDEOGRAPHER: The time is 10:59</p> <p>12 a.m. We're back on the record, Video No. 2.</p> <p>13 MS. TAGGART: Mr. Fazio wants to</p> <p>14 clarify something for the record.</p> <p>15 THE WITNESS: For the record, I</p> <p>16 wanted to clarify when we were talking</p> <p>17 about Exhibit 463B and talking about the</p> <p>18 third page of that exhibit, that I've seen</p> <p>19 various schedules prepared.</p> <p>20 I'm not sure if this is the exact</p> <p>21 schedule that I have seen. I was not on</p> <p>22 this email and haven't seen the email, but</p> <p>23 when we talked about transaction summaries,</p> <p>24 I had seen some transaction summaries but</p> <p>25 can't swear that this is the same version</p>	<p>1 M. Fazio</p> <p>2 that I had seen.</p> <p>3 BY MR. STERN:</p> <p>4 Q. Do you recall receiving a summary of</p> <p>5 the transaction from Alvarez during the week</p> <p>6 after the closing?</p> <p>7 A. Not during the week after the</p> <p>8 closing, no.</p> <p>9 Q. At what point?</p> <p>10 A. I would have seen when I've been</p> <p>11 talking to Alvarez, things that they might have</p> <p>12 been working on at the time, so I might have</p> <p>13 seen a draft that looked like this. I can't say</p> <p>14 if the numbers are exactly the same at this</p> <p>15 moment, but in October I think I would have seen</p> <p>16 something that they would have been working on.</p> <p>17 Q. Do you have any reason to believe</p> <p>18 that Alvarez would give a summary to FTI and not</p> <p>19 provide you with a copy of the same summary?</p> <p>20 MS. TAGGART: Object to form.</p> <p>21 Foundation.</p> <p>22 A. FTI does different things than we do,</p> <p>23 so they probably give them many things</p> <p>24 associated with the transaction and this whole</p> <p>25 case that they don't give us.</p>
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<p>1 M. Fazio</p> <p>2 Q. You recall attending meetings with</p> <p>3 Alvarez and FTI?</p> <p>4 A. Right.</p> <p>5 Q. After the closing, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And do you recall one way or the</p> <p>8 other whether you were given this summary in one</p> <p>9 of those meetings?</p> <p>10 A. I do not recall receiving this</p> <p>11 summary in any meeting.</p> <p>12 I might have seen drafts of it that</p> <p>13 they would have had, but I would not have been</p> <p>14 given a copy of that.</p> <p>15 Q. You have a specific recollection that</p> <p>16 you can testify to under oath that you did not</p> <p>17 receive this summary in one of those early</p> <p>18 meetings with Alvarez.</p> <p>19 MS. TAGGART: Objection. Asked and</p> <p>20 answered and argumentative.</p> <p>21 BY MR. STERN:</p> <p>22 Q. Is that your testimony?</p> <p>23 MS. TAGGART: You know it's improper</p> <p>24 for him to -- to ask him --</p> <p>25 MR. STERN: Please.</p>	<p>1 M. Fazio</p> <p>2 MS. TAGGART: -- to reaffirm</p> <p>3 testimony --</p> <p>4 MR. STERN: Please.</p> <p>5 MS. TAGGART: -- that he has already</p> <p>6 given.</p> <p>7 MR. STERN: Counsel --</p> <p>8 MS. TAGGART: You can answer --</p> <p>9 MR. STERN: -- this is not proper</p> <p>10 under the local rules.</p> <p>11 MS. TAGGART: -- that question.</p> <p>12 Asked and answered again.</p> <p>13 MR. STERN: Counsel, this is not</p> <p>14 proper under the local rules. You know</p> <p>15 that.</p> <p>16 MS. TAGGART: Your question is not</p> <p>17 proper under the local rules.</p> <p>18 MR. STERN: There's no reason to get</p> <p>19 hostile.</p> <p>20 Can you repeat the question.</p> <p>21 (Question was read back as follows:</p> <p>22 "QUESTION: You have a specific</p> <p>23 recollection that you can testify to under</p> <p>24 oath that you did not receive this summary</p> <p>25 in one of those early meetings with</p>

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<p>1 M. Fazio</p> <p>2 Alvarez. Is that your testimony?")</p> <p>3 MS. TAGGART: Same objections.</p> <p>4 A. I believe I have not taken away any</p> <p>5 schedule associated, similar to this, with me</p> <p>6 from any meetings with Alvarez.</p> <p>7 I may have seen drafts, like I said,</p> <p>8 of schedules similar to this, but I have no</p> <p>9 recollection of taking this away from a meeting</p> <p>10 as a final reconciliation associated with the</p> <p>11 transaction.</p> <p>12 Q. Do you recall that you -- do you</p> <p>13 recall specifically that you did not take away</p> <p>14 such a document?</p> <p>15 MS. TAGGART: Objection to form.</p> <p>16 Asked and answered. Argumentative.</p> <p>17 A. I do not believe I have taken away a</p> <p>18 copy of the schedule.</p> <p>19 Q. Is that something you discussed with</p> <p>20 your counsel during the break?</p> <p>21 MS. TAGGART: Objection.</p> <p>22 And I instruct not to answer.</p> <p>23 BY MR. STERN:</p> <p>24 Q. During the break did you discuss your</p> <p>25 testimony concerning this document?</p>	<p>1 M. Fazio</p> <p>2 MS. TAGGART: Objection.</p> <p>3 And I instruct not to answer.</p> <p>4 BY MR. STERN:</p> <p>5 Q. During the break did your counsel</p> <p>6 tell you that you should come back and correct</p> <p>7 your testimony concerning this document?</p> <p>8 MS. TAGGART: Objection.</p> <p>9 And I instruct not to answer.</p> <p>10 BY MR. STERN:</p> <p>11 Q. Do you have any reason to believe</p> <p>12 that FTI would not share with Houlihan this</p> <p>13 summary that it received from Alvarez in either</p> <p>14 late September or early October 2008?</p> <p>15 MS. TAGGART: Object to form.</p> <p>16 Foundation.</p> <p>17 You can answer.</p> <p>18 THE WITNESS: Can you repeat the</p> <p>19 question? Sorry.</p> <p>20 (Question was read back as follows:</p> <p>21 "QUESTION: Do you have any reason to</p> <p>22 believe that FTI would not share with</p> <p>23 Houlihan this summary that it received from</p> <p>24 Alvarez in either late September or early</p> <p>25 October 2008?")</p>
Page 68	Page 69
<p>1 M. Fazio</p> <p>2 A. I have no reason to believe why they</p> <p>3 wouldn't share that or would share that, and we</p> <p>4 share a lot of information throughout this case</p> <p>5 and work very cooperatively with FTI.</p> <p>6 Q. Looking again at Exhibit 463B, do you</p> <p>7 have that in front of you?</p> <p>8 A. Yes.</p> <p>9 Q. After the first two pages, which are</p> <p>10 Mr. Tully's email, you see there are a number of</p> <p>11 pages that at the bottom have the same label</p> <p>12 "Alvarez & Marsal Draft Barclays Deal Recap"?</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And there are one, two, three, four,</p> <p>16 five pages with that label.</p> <p>17 Do you see that?</p> <p>18 A. Yup.</p> <p>19 Q. Is it your testimony that you did not</p> <p>20 receive any of these materials in either late</p> <p>21 September or early October 2008?</p> <p>22 MS. TAGGART: Objection. Asked and</p> <p>23 answered.</p> <p>24 BY MR. STERN:</p> <p>25 Q. Is that your testimony?</p>	<p>1 M. Fazio</p> <p>2 A. As I said, I may have seen things</p> <p>3 that they were working on, but I do not recall</p> <p>4 receiving a copy of these attachments, that's</p> <p>5 correct.</p> <p>6 Q. You may have received them but you</p> <p>7 don't recall.</p> <p>8 A. I don't recall receiving this as I</p> <p>9 said.</p> <p>10 Q. So you may have received them but you</p> <p>11 don't recall; is that correct?</p> <p>12 MS. TAGGART: Objection. Asked and</p> <p>13 answered. Object to form.</p> <p>14 A. I do not believe I have received</p> <p>15 these is my recollection, yes.</p> <p>16 Q. Is it your recollection that you may</p> <p>17 have received them?</p> <p>18 MS. TAGGART: Object to form. Asked</p> <p>19 and answered.</p> <p>20 A. What was the question again?</p> <p>21 Q. Is it your recollection that you may</p> <p>22 have received them?</p> <p>23 A. I may have seen documents that</p> <p>24 Alvarez & Marsal were working on, but I do not</p> <p>25 recall receiving these.</p>

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<p>1 M. Fazio</p> <p>2 Q. So when you testified concerning the</p> <p>3 line "Negotiated Mark Haircut," was that</p> <p>4 testimony accurate?</p> <p>5 MS. TAGGART: Object to form.</p> <p>6 A. I have had discussions with Alvarez</p> <p>7 and have seen documents that they have produced</p> <p>8 for the committee which have used those terms,</p> <p>9 and I have asked various questions of Alvarez</p> <p>10 throughout this case and my understanding about</p> <p>11 that \$5 million is still the same; with respect</p> <p>12 to what they know and the market value of the</p> <p>13 securities that detail the transaction and the</p> <p>14 transaction value of those securities as of the</p> <p>15 19th has not been given to them or us as of this</p> <p>16 date as far as I'm aware.</p> <p>17 Q. So you referred to \$5 million.</p> <p>18 You meant \$5 billion?</p> <p>19 A. \$5 billion, yes.</p> <p>20 Q. In your testimony concerning this</p> <p>21 document and the line that reads "Assets</p> <p>22 transferred under repo stale marks," was that</p> <p>23 testimony accurate?</p> <p>24 MS. TAGGART: Object to form.</p> <p>25 I think you're going to have to be</p>	<p>1 M. Fazio</p> <p>2 more specific about what testimony you want</p> <p>3 him to discuss now.</p> <p>4 MR. STERN: I don't think so.</p> <p>5 BY MR. STERN:</p> <p>6 Q. Was that testimony accurate?</p> <p>7 A. All my testimony --</p> <p>8 MS. TAGGART: Object to form.</p> <p>9 A. -- is accurate, yes.</p> <p>10 And with respect to stale marks, they</p> <p>11 have used that term before, Alvarez & Marsal.</p> <p>12 Q. Okay. Let me show you a document</p> <p>13 that we've previously marked as Exhibit 466.</p> <p>14 I'll ask you to please review that</p> <p>15 and tell me what it is.</p> <p>16 (Document review.)</p> <p>17 A. It's an email from Brad Geer to</p> <p>18 Crayton Bell and myself.</p> <p>19 Q. And what is the attachment to it?</p> <p>20 A. Well, there's a lot of redacted</p> <p>21 things, but the attachment is, it looks like it</p> <p>22 says "Footnote A, securities transferred under</p> <p>23 Barclays repo agreement."</p> <p>24 Q. And do you see on that document</p> <p>25 there's handwritten brackets next to certain of</p>
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<p>1 M. Fazio</p> <p>2 the figures?</p> <p>3 A. Yup.</p> <p>4 Q. Do you know whose notation that is?</p> <p>5 A. No, I do not.</p> <p>6 Q. Aside from that one document that's</p> <p>7 labeled HLHZ 0035874, do you recall whether</p> <p>8 anything else was attached to this email?</p> <p>9 A. I do not recall.</p> <p>10 Q. You recall earlier we referred to an</p> <p>11 email that Mr. Despina sent to Weil, Gotshal</p> <p>12 which referred to a review by Houlihan of</p> <p>13 certain securities.</p> <p>14 Can you tell me who at Houlihan did</p> <p>15 that review, which people?</p> <p>16 MS. TAGGART: You can answer, but</p> <p>17 answer with names only.</p> <p>18 A. Staff persons; Michael Livanos,</p> <p>19 Andrew McNamara, Angela Lorenzano and there's</p> <p>20 probably several others.</p> <p>21 Q. Anyone else?</p> <p>22 A. There's probably several other staff</p> <p>23 people that report to those people that would</p> <p>24 have been working on it.</p> <p>25 Q. And were you involved in that review?</p>	<p>1 M. Fazio</p> <p>2 A. Yes.</p> <p>3 Q. And aside from yourself, were there</p> <p>4 any other senior people involved in that review?</p> <p>5 A. I would have shared results with some</p> <p>6 of my partners.</p> <p>7 Q. Who?</p> <p>8 A. Brad Geer primarily.</p> <p>9 Q. Saul Burian?</p> <p>10 A. Saul might have gotten a copy from</p> <p>11 Brad or somebody. I don't know.</p> <p>12 Q. What was the purpose of that review?</p> <p>13 MS. TAGGART: Objection.</p> <p>14 Objection, and I'm going to instruct</p> <p>15 not to answer on attorney client and work</p> <p>16 product privilege.</p> <p>17 BY MR. STERN:</p> <p>18 Q. Is that a review that Houlihan did in</p> <p>19 anticipation of litigation concerning the sale</p> <p>20 transaction?</p> <p>21 MS. TAGGART: Objection. Calls for</p> <p>22 legal conclusion.</p> <p>23 I'm going to object also not to</p> <p>24 answer on attorney-client and work product</p> <p>25 privileges.</p>

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<p>1 M. Fazio</p> <p>2 MR. STERN: So you're instructing him</p> <p>3 not to answer.</p> <p>4 MS. TAGGART: Yes.</p> <p>5 BY MR. STERN:</p> <p>6 Q. Is that a review that Houlihan would</p> <p>7 have done for the benefit of the committee in</p> <p>8 any event?</p> <p>9 MS. TAGGART: You can answer yes, no</p> <p>10 or I don't know to that.</p> <p>11 A. We would have attempted to review the</p> <p>12 security evaluation --</p> <p>13 MS. TAGGART: No, wait. Stop.</p> <p>14 THE WITNESS: Go ahead. What's your</p> <p>15 question?</p> <p>16 MS. TAGGART: I want you to just</p> <p>17 answer the question.</p> <p>18 Read the question again.</p> <p>19 (Question was read back as follows:</p> <p>20 "QUESTION: Is that a review that</p> <p>21 Houlihan would have done for the benefit of</p> <p>22 the committee in any event?")</p> <p>23 A. We may have.</p> <p>24 Q. Let me show you a document that we've</p> <p>25 previously marked as Exhibit 464B.</p>	<p>1 M. Fazio</p> <p>2 These are excerpts from a</p> <p>3 presentation that Alvarez gave on October 8,</p> <p>4 2008, and my question is do you recall attending</p> <p>5 a presentation that Alvarez gave to the</p> <p>6 committee on October 8, 2008?</p> <p>7 A. I believe I was there, yes.</p> <p>8 Q. And turning to the fourth page of</p> <p>9 this document, please, it's the page with the</p> <p>10 Bates number ending 4447.</p> <p>11 A. Okay.</p> <p>12 Q. It's labeled Roman three "Significant</p> <p>13 Transactions" at the top.</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Do you recall being present for the</p> <p>17 part of the presentation in which this slide was</p> <p>18 reviewed?</p> <p>19 And you can take a minute to review</p> <p>20 it.</p> <p>21 (Document review.)</p> <p>22 A. Yes.</p> <p>23 Q. And do you recall what was said by</p> <p>24 the participants concerning information on this</p> <p>25 slide when it was presented?</p>
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<p>1 M. Fazio</p> <p>2 A. To the best of my recollection,</p> <p>3 Mr. Fogarty would have been giving a summary of</p> <p>4 the transaction and detailing the information</p> <p>5 that they had at the time, and would have gone</p> <p>6 through these numbers with the committee.</p> <p>7 Q. And do you recall saying anything</p> <p>8 during this part of the presentation?</p> <p>9 A. I would have said stuff during this</p> <p>10 presentation as well as in privileged</p> <p>11 conversations with counsel and our committee,</p> <p>12 asking questions about the details and getting</p> <p>13 details associated with the securities that were</p> <p>14 actually transferred and their actual marks on</p> <p>15 the 19th.</p> <p>16 Q. Do you recall what you actually said?</p> <p>17 A. I don't remember verbatim what I</p> <p>18 said.</p> <p>19 Q. Do you recall generally?</p> <p>20 A. Generally I would have asked where</p> <p>21 they stand on getting the detailed schedule of</p> <p>22 assets associated with the transaction and the</p> <p>23 marks on the 19th.</p> <p>24 Q. Do you recall commenting at all on</p> <p>25 the line that states, "Negotiated a \$5 billion</p>	<p>1 M. Fazio</p> <p>2 reduction"?</p> <p>3 A. We would have talked with Fogarty and</p> <p>4 the estate about this many times; that these</p> <p>5 were stale marks and the actual marks as</p> <p>6 represented to us, the actual marks as</p> <p>7 represented by Mr. Seery and Mr. Klein, the</p> <p>8 actual marks had declined significantly between</p> <p>9 the time of the last run and the Friday the</p> <p>10 19th.</p> <p>11 Q. My question is a bit more specific</p> <p>12 than that.</p> <p>13 Going back in time to this meeting,</p> <p>14 if you recall, did you say anything at this</p> <p>15 meeting specifically concerning this line which</p> <p>16 states, "Negotiated a \$5 billion reduction"?</p> <p>17 A. I would have commented, like I said,</p> <p>18 on the entire line and the fact that the stale</p> <p>19 marks and the securities detail that we did not</p> <p>20 have associated with the transaction or they</p> <p>21 didn't have associated with coming up with a</p> <p>22 detail mark-to-market of all the securities</p> <p>23 transferred and their market values on the 19th.</p> <p>24 Q. Do you recall your specific words on</p> <p>25 that subject at this meeting?</p>

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<p>1 M. Fazio</p> <p>2 A. No, I do not.</p> <p>3 Q. Did you take any notes during the</p> <p>4 meeting?</p> <p>5 A. I do not believe so.</p> <p>6 Q. Were you involved in any analysis of</p> <p>7 the cure liability that Barclays had assumed?</p> <p>8 MS. TAGGART: You can answer that</p> <p>9 yes, no or I don't know.</p> <p>10 A. No.</p> <p>11 Q. Do you recall attending a meeting in</p> <p>12 February 2009 at these offices, Boies Schiller,</p> <p>13 with representatives of Barclays Capital?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall that Mr. King and</p> <p>16 Mr. Keegan from Barclays and Mr. Larocca from</p> <p>17 Barclays attended that meeting?</p> <p>18 A. I believe all three were present.</p> <p>19 Q. And do you recall there was</p> <p>20 discussion at that meeting concerning Barclays'</p> <p>21 replacement of the Fed repo?</p> <p>22 A. Yes.</p> <p>23 Q. At that meeting were you and others</p> <p>24 from Houlihan given an opportunity to ask</p> <p>25 questions that you had concerning Barclays'</p>	<p>1 M. Fazio</p> <p>2 replacement of the Fed repo?</p> <p>3 A. We asked questions that we wanted to</p> <p>4 ask, yes, we were given the opportunity.</p> <p>5 Q. Did Barclays refuse to answer any of</p> <p>6 yours questions?</p> <p>7 A. I don't know if they refused to</p> <p>8 answer any question.</p> <p>9 I know that they -- we had still come</p> <p>10 out of that meeting requesting significant</p> <p>11 amounts of information that we did not get, so</p> <p>12 if you say that we did not get information that</p> <p>13 we had requested numerous times, then I would</p> <p>14 say that they didn't answer all the questions.</p> <p>15 Q. I understand that there was a</p> <p>16 follow-up request by the committee for</p> <p>17 documents; is that right?</p> <p>18 A. That's correct.</p> <p>19 Q. Putting aside the request for</p> <p>20 documents, were there any questions that you</p> <p>21 posed in that meeting that the Barclays people</p> <p>22 refused to answer?</p> <p>23 MS. TAGGART: Object to form.</p> <p>24 Argumentative. Asked and answered.</p> <p>25 You can answer again.</p>
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<p>1 M. Fazio</p> <p>2 A. As I said, the main purpose of the</p> <p>3 meeting is to get information associated with</p> <p>4 the detailed schedules that we had requested</p> <p>5 numerous times and have not received, so if you</p> <p>6 say did they not answer a question by not giving</p> <p>7 us information, I would contend that they didn't</p> <p>8 answer all our questions, yes.</p> <p>9 Q. In the meeting, do you recall a</p> <p>10 specific question that you or others on behalf</p> <p>11 of the committee asked that Barclays did not</p> <p>12 answer?</p> <p>13 A. We asked for documents and we did not</p> <p>14 receive them, so I think that's a question, can</p> <p>15 we get the documents, and since we haven't</p> <p>16 received them, I guess that's a non-answer.</p> <p>17 Q. Well, do you recall when the</p> <p>18 committee made its request for documents?</p> <p>19 A. I don't have the exact dates, no.</p> <p>20 I'd have to go back to emails and requests for</p> <p>21 information.</p> <p>22 Q. Subsequently Barclays did produce</p> <p>23 documents to the committee.</p> <p>24 Do you recall that?</p> <p>25 MS. TAGGART: Object to form.</p>	<p>1 M. Fazio</p> <p>2 Foundation.</p> <p>3 A. They have given some documents to the</p> <p>4 committee, that's correct.</p> <p>5 They have not answered all of my</p> <p>6 questions to give me a detailed listing of every</p> <p>7 security that was transferred and its market</p> <p>8 value on the 19th.</p> <p>9 Q. Have you reviewed Professor</p> <p>10 Pfleiderer's report in this case?</p> <p>11 A. I do not believe I have. I'd have to</p> <p>12 see it, but I don't believe so.</p> <p>13 Q. Do you recall the volume of material</p> <p>14 that Barclays produced after that February 2009</p> <p>15 meeting?</p> <p>16 MS. TAGGART: Object to form and</p> <p>17 foundation.</p> <p>18 And are you including in this</p> <p>19 litigation?</p> <p>20 BY MR. STERN:</p> <p>21 Q. Do you recall how many documents</p> <p>22 Barclays produced voluntarily to Houlihan after</p> <p>23 that February 2009 meeting?</p> <p>24 MS. TAGGART: Object to form.</p> <p>25 Foundation.</p>

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1 M. Fazio
2 And if you won't say that you're
3 asking something about the litigation, then
4 I have to instruct on privilege and
5 instruct not to answer.

6 Just ask before the litigation and
7 I'll let him answer, but if it gets into
8 what has he seen and talked about, what
9 production we've gotten from Barclays --

10 MR. STERN: Please, please, Counsel,
11 Counsel, I'm not looking for speeches.

12 BY MR. STERN:

13 Q. After the February 2009 meeting,
14 Houlihan received documents from Barclays,
15 correct?

16 MS. TAGGART: Objection and -- still
17 objecting to form, and unless you're going
18 to limit it before the litigation, I'm
19 going to instruct not to answer on
20 privilege.

21 MR. STERN: You're instructing him
22 not to answer whether Houlihan received
23 documents from Barclays on grounds of
24 privilege?

25 MS. TAGGART: Well, yes, because if

1 M. Fazio
2 you're asking --

3 MR. STERN: Okay. Fine. Fine. I
4 don't agree with that assertion or many of
5 your other assertions concerning
6 privilege but --

7 MS. TAGGART: Are you just asking
8 whether you Barclays have given --

9 MR. STERN: -- we can take that up
10 separately.

11 MS. TAGGART: -- him Houlihan
12 documents?

13 MR. STERN: Please. This is not a
14 time for us to have a colloquy.

15 BY MR. STERN:

16 Q. After that February 2009 meeting and
17 after Barclays produced documents to the
18 committee, what did the committee do to raise
19 any follow-up questions with Barclays?

20 MS. TAGGART: Objection.

21 And I'm going to instruct not to
22 answer if you --

23 MR. STERN: Did --

24 MS. TAGGART: -- to the extent --
25 hold on -- to the extent that you have

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1 M. Fazio
2 information from communication with
3 counsel. Well, then I'm going to instruct
4 not to answer.

5 BY MR. STERN:

6 Q. To your knowledge, did you or anyone
7 else acting on behalf of the committee raise any
8 follow-up questions with Barclays after that
9 February 2009 meeting?

10 MS. TAGGART: You can answer that yes
11 or no.

12 A. We have had communications through
13 the lawyers on follow-up items on a continuous
14 basis, yes.

15 Q. And what were those questions?

16 MS. TAGGART: Object to form.

17 A. We have a --

18 MS. TAGGART: Wait.

19 THE WITNESS: Go ahead.

20 MS. TAGGART: You mean the questions
21 that he asked the counsel or that he thinks
22 was asked of Barclays?

23 MR. STERN: Let me ask a question.

24 BY MR. STERN:

25 Q. What questions did the committee

1 M. Fazio
2 raise with Barclays after the February 2009
3 meeting?

4 MS. TAGGART: Object to form.
5 Foundation.

6 But to the extent you know what the
7 committee asked, you can answer.

8 A. There was a memo written from counsel
9 requesting additional information associated
10 with this transaction.

11 Q. That was a request for additional
12 documents, correct?

13 A. That's correct.

14 Q. Aside from that, did you or anybody
15 else acting on behalf of the committee request a
16 follow-up meeting with representatives of
17 Barclays concerning any questions that you had?

18 MS. TAGGART: I'm going to object to
19 form, foundation and privilege.

20 You can respond whether you --

21 A. I have not had direct conversations
22 with Barclay personnel.

23 I know our counsel has had many
24 conversations with Barclays' counsel.

25 Q. Do you know if your counsel or

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1 M. Fazio
2 anybody from Houlihan has requested, ever
3 requested, a further meeting with Barclays after
4 that February 2009 meeting?

5 MS. TAGGART: I'm going to object to
6 form, foundation and privilege except to
7 the extent you should answer -- hold on,
8 you should answer whether you did any
9 such --

10 A. I had no direct conversations with
11 Barclay personnel for a request of a meeting
12 with them, me and a Barclay personnel.

13 Q. Okay. So, in other words, you met
14 with Barclays in February 2009 and you did not
15 request any follow-up meeting with Barclays; is
16 that right?

17 MS. TAGGART: Objection. Asked and
18 answered. Form, foundation.

19 You should respond to what you
20 personally did if that's correct.

21 A. And I responded numerous times to
22 you, but I'll respond again.

23 I did not have any conversations with
24 Barclay personnel for a follow-up meeting.

25 Q. If you had open questions, why didn't

1 M. Fazio
2 you press for a follow-up meeting with Barclays?
3 MS. TAGGART: Object to form.
4 Foundation.

5 You can answer, but don't reveal any
6 communications that you had with counsel.

7 A. Most of my conversations were with
8 counsel with regard to this matter and I had no
9 direct conversations with Barclay, and as such,
10 I guess it's all privileged.

11 Q. Sir, you remember attending a
12 face-to-face meeting with representatives of
13 Barclays in February 2009, correct?

14 A. That's correct.

15 Q. And do you recall that the Barclays
16 representatives indicated their willingness to
17 address the committee's questions?

18 A. They had answered most of our
19 questions other than the information that we
20 requested on the detailed schedules that was
21 subject matter of the follow-up letters that
22 were sent to Barclays and yourselves.

23 Q. And after documents were produced,
24 nobody acting on behalf of the committee, to
25 your knowledge, requested a follow-up meeting

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1 M. Fazio
2 with Barclays representatives; is that correct?

3 MS. TAGGART: Object to form,
4 foundation and privilege.

5 If you have any information that's
6 separate from your communications with
7 counsel, then you can talk about that.

8 A. All of my conversations were with
9 counsel.

10 Q. Putting aside your communications
11 with counsel, do you have any knowledge of any
12 request for a follow-up meeting with Barclays
13 any time after that February 2009 meeting?

14 MS. TAGGART: First, for the record,
15 I object to Mr. Stern laughing as he's
16 asking that question.

17 MR. STERN: I'm not laughing.

18 MS. TAGGART: I'm objecting to form.

19 MR. STERN: I'm not laughing. I'm
20 asking a question.

21 BY MR. STERN:

22 Q. Aside from your communications with
23 counsel, do you have any recollection of the
24 committee requesting a follow-up meeting with
25 Barclays?

1 M. Fazio
2 MS. TAGGART: Okay. You can answer
3 if you have knowledge outside of
4 communications with counsel.

5 A. I have no knowledge outside of
6 discussions with counsel.

7 Q. Based on the written material that
8 you received from Barclays, did you have any
9 follow-up questions to raise with Barclays?

10 MS. TAGGART: Object to form.

11 You can answer yes or no to that.

12 A. We have many follow-up questions and
13 information requests from Barclays.

14 Q. Did you ever suggest that there
15 should be a follow-up, face-to-face meeting with
16 Barclays in order to address those questions?

17 MS. TAGGART: Objection. Form,
18 foundation and I'm going to instruct not to
19 privilege -- no to answer on the scope of
20 privilege if this was communication with
21 the you and your counsel.

22 If you disclosed that to someone
23 other than Houlihan and your counsel, you
24 can answer.

25 A. All my discussions were with counsel

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<p>1 M. Fazio</p> <p>2 on this matter.</p> <p>3 Q. Well, then let me just ask about your</p> <p>4 point of view.</p> <p>5 Would you have found it helpful,</p> <p>6 given your review of the documents that Barclays</p> <p>7 provided, to have a face-to-face meeting once</p> <p>8 again with Mr. King, for example, with</p> <p>9 Mr. Keegan, for example?</p> <p>10 MS. TAGGART: Object to form.</p> <p>11 To the extent you understand, you can</p> <p>12 answer.</p> <p>13 A. I think that there's many things that</p> <p>14 we have requested from Barclays, and to ask them</p> <p>15 to give us that information and to have that</p> <p>16 information would be very helpful, yes.</p> <p>17 Q. So in your view, it would have been</p> <p>18 helpful to have had a follow-up meeting with</p> <p>19 Mr. King and Mr. Keegan.</p> <p>20 A. I did not --</p> <p>21 MS. TAGGART: Object to form.</p> <p>22 A. -- say that.</p> <p>23 Q. Well, that was my question though.</p> <p>24 A. I understand that, but I --</p> <p>25 Q. Can you answer my question?</p>	<p>1 M. Fazio</p> <p>2 The question is --</p> <p>3 MS. TAGGART: Okay. Now you're</p> <p>4 interrupting him.</p> <p>5 MR. STERN: Let me just ask a</p> <p>6 question.</p> <p>7 BY MR. STERN:</p> <p>8 Q. The question is --</p> <p>9 MS. TAGGART: You have to wait till</p> <p>10 he finishes his answer before you ask the</p> <p>11 next question.</p> <p>12 Do you have anything more to say?</p> <p>13 THE WITNESS: No.</p> <p>14 A. Go to the next question.</p> <p>15 Q. The question is, would you have found</p> <p>16 it helpful at the time after receiving</p> <p>17 spreadsheets and other materials from Barclays</p> <p>18 to have had a follow-up, face-to-face meeting</p> <p>19 with Mr. King and Mr. Keegan for example?</p> <p>20 MS. TAGGART: Object to form. Asked</p> <p>21 and answered.</p> <p>22 A. I believe we have had many</p> <p>23 communications with my lawyers on what we</p> <p>24 believe is best. It's clearly more information</p> <p>25 we can get from Barclays is always better</p>
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<p>1 M. Fazio</p> <p>2 associated with this transaction.</p> <p>3 Q. Do you know of any reason, do you</p> <p>4 know of any reason why the committee did not</p> <p>5 request a follow-up meeting with the Barclays</p> <p>6 representatives?</p> <p>7 MS. TAGGART: I'm going to object to</p> <p>8 form and instruct not to answer on</p> <p>9 attorney-client and work product privilege.</p> <p>10 BY MR. STERN:</p> <p>11 Q. Did it concern you personally that at</p> <p>12 no time after that February 2009 meeting did the</p> <p>13 committee request a follow-up meeting with</p> <p>14 Barclays representatives? Did that concern you?</p> <p>15 MS. TAGGART: Objection to form and</p> <p>16 I'm going to instruct not to answer on</p> <p>17 privilege.</p> <p>18 BY MR. STERN:</p> <p>19 Q. Do you recall that when Barclays</p> <p>20 initially produced documents to the committee,</p> <p>21 those documents were produced in a TIFF format?</p> <p>22 A. I don't recall what format they were</p> <p>23 received in.</p> <p>24 Q. Do you recall subsequently they were</p> <p>25 produced in a native format?</p>	<p>1 M. Fazio</p> <p>2 A. I don't recall what formats they were</p> <p>3 received in.</p> <p>4 MR. STERN: We'll mark this as the</p> <p>5 next exhibit.</p> <p>6 (Deposition Exhibit 619A, Email dated</p> <p>7 9/22/08 from O'Donnell to various</p> <p>8 individuals with attachment, Bates stamped</p> <p>9 HLHZ0009061, marked for identification, as</p> <p>10 of this date.)</p> <p>11 BY MR. STERN:</p> <p>12 Q. Looking at Exhibit 619A, can you tell</p> <p>13 me what it is?</p> <p>14 A. It's a memo from Dennis O'Donnell to</p> <p>15 various people, I won't read everybody off, but</p> <p>16 setting forth in connection with the committee</p> <p>17 call at 1:00 p.m., an email from Houlihan Lokey</p> <p>18 summarizing the current state of the</p> <p>19 LBI/Barclays transaction.</p> <p>20 Q. Did you have any role in drafting the</p> <p>21 email from Houlihan Lokey summarizing the</p> <p>22 current state of the LBI/Barclays transaction?</p> <p>23 A. I would have reviewed it.</p> <p>24 Q. Do you know who drafted it?</p> <p>25 A. I don't recall who the principal</p>

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<p>1 M. Fazio</p> <p>2 author was, no.</p> <p>3 Q. Was that email prepared by Houlihan</p> <p>4 in order to communicate certain facts to the</p> <p>5 Creditors Committee?</p> <p>6 MS. TAGGART: Object to form.</p> <p>7 A. It would have been written to</p> <p>8 summarize the current state of the transaction</p> <p>9 as we knew it as of that time.</p> <p>10 Q. And was that email prepared in order</p> <p>11 to provide information that the committee would</p> <p>12 need in order to make a decision concerning the</p> <p>13 transaction?</p> <p>14 MS. TAGGART: I'm going to instruct</p> <p>15 not to answer on privilege and object to</p> <p>16 form.</p> <p>17 BY MS. TAGGART:</p> <p>18 Q. Do you know whether that email was</p> <p>19 prepared by Houlihan Lokey in anticipation of</p> <p>20 litigation concerning the LBI/Barclays</p> <p>21 transaction?</p> <p>22 MS. TAGGART: I'm going to object and</p> <p>23 instruct not to answer on privilege.</p> <p>24 BY MR. STERN:</p> <p>25 Q. Do you know whether that email from</p>	<p>1 M. Fazio</p> <p>2 Houlihan Lokey would have been sent to the</p> <p>3 committee and whether the committee would have</p> <p>4 needed that information in any event, whether or</p> <p>5 not it was prepared in anticipation of</p> <p>6 litigation?</p> <p>7 MS. TAGGART: Object to form,</p> <p>8 foundation and I'm going to instruct not to</p> <p>9 answer on privilege.</p> <p>10 BY MR. STERN:</p> <p>11 Q. Regardless of whether there was any</p> <p>12 anticipation of litigation at the time, did the</p> <p>13 Houlihan Lokey email contain information that</p> <p>14 the committee needed at the time in order to</p> <p>15 make certain decisions?</p> <p>16 MS. TAGGART: Object to form,</p> <p>17 foundation and instruct you not to answer</p> <p>18 on privilege.</p> <p>19 MR. STERN: Let's mark this as the</p> <p>20 next exhibit.</p> <p>21 (Deposition Exhibit 620A, Email chain</p> <p>22 beginning with email dated 9/21/08 from</p> <p>23 O'Donnell to Bell, Bates stamped</p> <p>24 MTHM00007214 through 7218, marked for</p> <p>25 identification, as of this date.)</p>
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<p>1 M. Fazio</p> <p>2 BY MR. STERN:</p> <p>3 Q. This appears to be a series of emails</p> <p>4 referring to a "Summary of the LBI Sale</p> <p>5 Hearing."</p> <p>6 Do you see that?</p> <p>7 A. That's the title of this, yes.</p> <p>8 Q. Looking at the second page of this</p> <p>9 exhibit, does this refresh your recollection</p> <p>10 that you received a copy of that Summary of the</p> <p>11 LBI Sale Hearing at the time of this email?</p> <p>12 (Document review.)</p> <p>13 Q. Do you see that you're copied as a</p> <p>14 cc?</p> <p>15 A. I did not see my name yet, sorry.</p> <p>16 Q. It's a long list.</p> <p>17 (Document review.)</p> <p>18 A. I see my name there, yes, finally.</p> <p>19 Q. Now do you recall whether the Summary</p> <p>20 of the LBI Sale Hearing was sent to the</p> <p>21 committee in order to communicate certain facts</p> <p>22 to the committee concerning the sale hearing?</p> <p>23 MS. TAGGART: Object to form,</p> <p>24 foundation.</p> <p>25 I'm going to instruct not to answer</p>	<p>1 M. Fazio</p> <p>2 on privilege.</p> <p>3 And also note that this is a summary</p> <p>4 from Milbank.</p> <p>5 BY MR. STERN:</p> <p>6 Q. Same question.</p> <p>7 MS. TAGGART: Same objections and</p> <p>8 instruction.</p> <p>9 BY MR. STERN:</p> <p>10 Q. Regardless of the author, do you know</p> <p>11 whether this Summary of the LBI Sale Hearing was</p> <p>12 intended to communicate certain facts to the</p> <p>13 committee concerning the sale hearing?</p> <p>14 MS. TAGGART: So same objections and</p> <p>15 instructions. Don't answer.</p> <p>16 BY MR. STERN:</p> <p>17 Q. Do you know whether this summary was</p> <p>18 prepared in anticipation of litigation</p> <p>19 concerning the sale transaction?</p> <p>20 MS. TAGGART: Same objections and</p> <p>21 instruction.</p> <p>22 BY MR. STERN:</p> <p>23 Q. Do you know whether this is a summary</p> <p>24 that the committee would have needed in any</p> <p>25 event, without regard to whether there might be</p>

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1 M. Fazio
2 anticipated litigation, in order to make certain
3 decisions concerning the transaction?
4 MS. TAGGART: Same objections and
5 instruction.
6 BY MR. STERN:
7 Q. I'll give you a document that we
8 previously marked as Exhibit 476B, and I'll just
9 point out that in the cc line there's a lengthy
10 list of recipients and you are included as one.
11 Can you tell me what this document
12 is?
13 A. There's a bunch of information that's
14 been redacted, but the attachment is entitled
15 "Transcript Barclays/Lehman Agreement
16 Announcement September 17th, 2008."
17 Q. Now with respect to the information
18 that was redacted, do you know whether that
19 information consisted of a summary of the
20 transcript that was attached?
21 MS. TAGGART: You can answer yes or
22 no or I don't know to that.
23 A. I do not know.
24 Q. Do you know whether the information
25 that was redacted included facts that the

1 M. Fazio
2 committee needed to know?
3 MS. TAGGART: You can answer yes or
4 no or I don't know.
5 A. I don't know.
6 Q. Do you know whether the information
7 that was redacted was information that was
8 prepared in anticipation of litigation relating
9 to the sale transaction?
10 MS. TAGGART: I'm going to object to
11 form, foundation and instruct not to answer
12 on privilege.
13 BY MR. STERN:
14 Q. Do you know whether the information
15 that's redacted is information that the
16 committee would have needed in any event,
17 without regard to any anticipated litigation?
18 MS. TAGGART: I'm -- same objections
19 and instruction.
20 BY MR. STERN:
21 Q. Do you know whether the information
22 that was redacted was information that the
23 committee needed in order to make certain
24 decisions in connection with the sale
25 transaction?

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1 M. Fazio
2 MS. TAGGART: Same objection and
3 instruction.
4 MR. STERN: Let's mark this as the
5 next exhibit.
6 (Deposition Exhibit 621 A, Email
7 chain beginning with email dated 9/20/08
8 from Fazio to O'Donnell with attachment,
9 Bates stamped HLHZ0027996 through 998,
10 marked for identification, as of this
11 date.)
12 BY MR. STERN:
13 Q. I'll ask you to please review 621A
14 and tell us what it is.
15 (Document review.)
16 A. It's an email from myself to Dennis
17 O'Donnell, Craig Bell and Brad Geer. The
18 subject matter is Lehman/Barclays.
19 Q. Now in the bottom email on the first
20 page Mr. Bell writes, "Here is the draft
21 Clarification Letter. This represents Weil's
22 view of the deal and Barclays is reviewing
23 Dennis O'Donnell. Can you please send to the
24 Houlihan team."
25 And then above you write an email to

1 M. Fazio
2 Mr. O'Donnell, Mr. Bell and Mr. Geer.
3 In your communication which is
4 redacted here, were you commenting on the draft
5 Clarification Letter?
6 MS. TAGGART: I'm going to object and
7 instruct not to answer on privilege.
8 BY MR. STERN:
9 Q. In your communication, were you
10 suggesting changes to the Clarification Letter?
11 MS. TAGGART: Same objection and
12 instruction.
13 BY MR. STERN:
14 Q. Do you know whether before you wrote
15 your email you reviewed the draft that had been
16 provided to you?
17 MS. TAGGART: You can answer.
18 A. I do not know.
19 Q. Now before the September 19th Sale
20 Hearing, did you participate in any discussions
21 with Mr. Seery, James Seery, concerning the
22 anticipated transaction?
23 A. I believe I was party to a conference
24 call with him.
25 Q. In that conference call, do you

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1 M. Fazio
2 recall whether Mr. Seery described to Houlihan
3 how the exchange-traded derivatives business
4 would be treated in the anticipated transaction?
5 A. I do not recall specifically how he
6 indicated it would be treated.
7 Q. Do you recall generally?
8 A. I do not recall generally what he
9 would have said in that meeting with regard to
10 the exchange-traded derivatives.
11 Q. So you have no recollection
12 concerning what Mr. Seery told you concerning
13 how the exchange-traded derivatives business was
14 going to be treated in the anticipated
15 transaction.
16 A. We talked about the transaction in
17 general and what was going and what was staying,
18 and it was represented that all the people,
19 which would include people associated with
20 exchange-traded derivatives, were going with the
21 transaction.
22 Q. Do you recall anything that Mr. Seery
23 told you before the Sale Hearing concerning the
24 transfer of the exchange-traded derivatives
25 business to Barclays aside from the people who

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1
2 C E R T I F I C A T E
3
4 STATE OF NEW YORK)
5) ss.:
6 COUNTY OF QUEENS)
7
8 I, ANNETTE ARLEQUIN, a Notary Public
9 within and for the State of New York, do
10 hereby certify:
11 That MICHAEL A. FAZIO, the witness
12 whose deposition is hereinbefore set forth,
13 was duly sworn by me and that such
14 deposition is a true record of the
15 testimony given by such witness.
16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage; and that I am
19 in no way interested in the outcome of this
20 matter.
21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 12th day of February, 2010.
23
24 -----
25 ANNETTE ARLEQUIN, CCR, RPR

1 M. Fazio
2 worked in the business?
3 A. No. I do not remember specifically,
4 no.
5 MR. STERN: I have no further
6 questions.
7 THE VIDEOGRAPHER: The time is 11:45
8 a.m. We're going off the record.
9 (Time noted: 11:45 a.m.)
10
11
12 MICHAEL A. FAZIO
13
14
15 Subscribed and sworn to before me
16 this day of 2010.
17
18
19
20
21
22
23
24
25

1
2 I N D E X
3
4 Witness Page
5
6 MICHAEL A. FAZIO
7 MR. STERN 7
8
9 QUESTIONS INSTRUCTED NOT TO ANSWER
10 Page Line
11 15 24
12 16 24
13 17 14
14 18 4
15 36 5
16 37 19
17 39 10
18 42 6
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